

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *

DONNA SCHMIDT,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 89-0058-PC

* * * * *

*
*
*
*
*
*
*
*
*
*
*
*

INTERIM
DECISION
AND
ORDER

NATURE OF THE CASE

This case involves an appeal of a decision by respondent Department of Employment Relations (DER) with respect to appellant's salary. The parties agreed to submit this case on the basis of a stipulation of facts for a decision on one issue ("Do the raised minimum rates promulgated by the Respondent, effective October 10, 1984, apply to the reassignment of the Police Detective classification to Pay Range 14, effective June 10, 1984"), with the further agreement that if this issue is resolved against appellant certain other issues subsequently would be addressed. The stipulated facts are set forth as the following findings of fact (the exhibits, which are part of the stipulation, are not reproduced here).

FINDINGS OF FACT

1. Petitioner, Donna Schmidt is, and at all times material to this matter was, employed by the University of Wisconsin-Milwaukee, holding the position of Police Detective.
2. On June 8, 1984, Howard W. Fuller, Secretary, DER, approved the recommendations and report of the Enforcement and Regulation Compliance Survey which raised the pay range for Police Detective from 12 to 13, effective June 10, 1984. A copy of this document is attached as Exhibit 1. This change in pay range for Police Detective was conveyed to the University of Wisconsin-Milwaukee by memorandum dated June 13, 1984. See Exhibit 2 attached.

3. By correspondence dated October 10, 1984, Barbara P. Horton, Administrator, Division of Classification and Compensation, pursuant to her authority under §ER-PERS 29.02(2), Wis. Adm. Code, promulgated raised minimum rates and new PSICM's for police officers at the University of Wisconsin-Milwaukee including Police Detective, pay range 13, and Police Sergeant, pay range 14. Effective October 14, 1984, the new PSICM for Police Detective 13 was \$11.072/hour and the new PSICM for Police Sergeant was \$12.081/hour. See Exhibit 3, attached.

4. On January 25, 1988, Gerald F. Hoddinott¹, proposed to the Secretary of DER that the Police Detective classification be reassigned to pay range 14 to correct an error made in the implementation of the Enforcement/Regulation Compliance Survey in June 1984, which placed the Police Sergeant in pay range 14 and the Police Detective in pay range 13. Mr. Hoddinott proposed reassigning the Police Detective classification to pay range 14 to bring the classification of Police Sergeant, State Patrol Sergeant and Police Detective into appropriate alignment. See Exhibit 4 attached.

5. By memorandum dated April 18, 1988, Bert Miller, Division of Classification and Compensation, DER, advised the UW-Milwaukee Personnel Office of the error discussed in Mr. Hoddinott's correspondence dated January 25, 1988 and requested certain information regarding affected employees. See Exhibit 5.

6. On April 21, 1988, in compliance with the request from Bert Miller (Exhibit 5), a memorandum was sent to Ms. Miller, together with computations for Donna Schmidt and another employee. See Exhibit 6. The calculations reflect the interaction of the change of Police Detective pay range from 13 to 14, effective June 10, 1984, and the raised minimum rate and resulting new PSICM, effective October 14, 1984, for Police Detective using pay range 14. The calculations are mathematically correct.

7. The classification of the Petitioner's position was officially reassigned to pay range 14 pursuant to a Reallocation Notice dated May 2, 1988. The effective date of this transaction was June 10, 1984. See Exhibit 7.

¹At that time, Mr. Hoddinott was Administrator, Division of Classification and Compensation, DER. He is currently a member of this Commission and has recused himself from any participation in this case.

8. Section ER-PERS 29.02(2)(a), Wis. Adm. Code, is the administrative rule section providing for raised minimum rates which was in effect at all times material to this matter. See Exhibit 8.

DISCUSSION

As a result of a personnel survey, the pay range of appellant's position at UW-M was raised from range 12 to range 13, effective June 10, 1984. Later that year, respondent raised the minimum pay rates and PSICM's (permanent status in class minimums) of police officers at UW-M, including detective, pay range 13, and sergeant, pay range 14, effective October 14, 1984. Respondent did this at the request of the appointing authority (UW-M), which had asserted (Exhibit 9) that "in order to retain qualified, experienced Police Officers we must ask for a new raised minimum rate." The new PSICM rates that were approved were \$11.072 for detective and \$12.081 for sergeant. As a result of this change, appellant received a salary increase.

Subsequently, in 1988, respondent determined that it had made an error in 1984 in connection with the personnel survey by having assigned the detective classification to pay range 13 instead of 14, as the sergeant classification had been, and on May 2, 1988, reassigned appellant's classification from pay range 13 to 14 with an effective date of June 10, 1984. In connection with this transaction, respondent sent a memo dated April 18, 1988 (Exhibit 5) to UW-M personnel which included the following:

[W]e are making the pay range change [from 5-13 to 5-14] effective June 10, 1984, and will go back to that date to determine what pay rate for affected employes would have been appropriate at that time, including the back pay due them . . . I am . . . requesting that someone in your payroll department provide information for those employes on the hourly payroll rate calculation showing the actual rate paid and what the pay rate should have been at the higher level from the effective date of the change to the present time. Please have them also include the calculations on the amount of back pay due to each affected employe.

In response to this memo, UW-M personnel provided respondent a breakdown or reconstruction of appellant's salary premised on her position having been assigned to pay range 05-14 instead of 05-13 as of June 10, 1984. This analysis reflected the following entry with respect to the 1984 raised minimum rate: "Base rate raised to \$12.081 (PSICM of PR 5-14) as result of ap-

proved Raised Hiring Rate for UWM effective 10/14/84" (Exhibit 6). The issue to which the parties stipulated ("Do the raised minimum rates promulgated by the respondent, effective October 10, 1984, apply to the reassignment of the Police Detective classification to Pay Range 14, effective June 10, 1984") presents the question of whether, following the retroactive reassignment in 1988 of the detective classification from pay range 05-13 to 05-14, with an effective date of June 10, 1984, the raised minimum rates that were effective October 10, 1984, were applicable to pay range 05-14 rather than to 05-13, the pay range that was actually in effect as of October 10, 1984. Although it is not set forth in the stipulated facts, it is apparent from the appeal document and the briefs that when the classification of appellant's position was reassigned from pay range 05-13 to 05-14 in 1988, appellant's salary and back pay was calculated by applying the October 1984 raised minimum rates for pay range 05-14 to her salary, but subsequently respondent decided that this approach was incorrect and that appellant was required to refund the extra salary she had received in connection with that approach.

Appellant's initial brief takes the position that the retroactive application of the raised hiring rates to the higher pay range for appellant's position (to 05-14 rather than 05-13) is consistent with the UW-M's request for raised hiring rates for all of its police officers:

For the Commission to conclude that the department's request for reimbursement of Appellant's back pay, and reduction of present pay rate is enforceable, the Commission must conclude, as a matter of law, that Appellant is not entitled of the benefit of the raised minimum rate requested by the University of Wisconsin-Milwaukee for all of its police officers, which request was approved by the Department on October 10, 1984. To so conclude, as a matter of law, would require a factual determination that the University of Wisconsin-Milwaukee administration would not have requested a raised minimum rate for Appellant if they had known that Appellant's pay range was 14 rather than 13. There is no evidence upon which to reach such a conclusion, but there is evidence which would refute such a conclusion. Specifically, the request for raised minimum rate included a request for the position of Police Sergeant, which the University of Wisconsin administration knew was then in pay range 14. As previously noted, Police Detective and Police Sergeant are similar positions as to responsibility and these two classifications were in counterpart pay ranges prior to implementation of the Enforcement/Regulation Compliance Survey.

Respondent in its brief takes two tacks. First, it cites this language from §ER-Pers 29.02(2)(a), Wis. Adm. Code:

When competitive labor market conditions have been evaluated and the minimum rate is determined to be below the market rate for a class . . . the administrator, at the request of the appointing authority, may establish a raised minimum rate above the pay range minimum for recruiting, hiring and retaining employes. (emphasis added)

Respondent contends, in essence, that at the time the raised minimum rates were established in October 1984, appellant's detective position was at pay range 05-13 and there was never any evaluation of labor market conditions to determine whether the 05-14 minimum rate was below the market rate for detective, and therefore there is no basis under §ER Pers 29.02(2)(a) for the application of a raised rate for appellant's position at range 05-14.

In response to this contention, appellant first asserts that it involves an alleged fact not of record. After respondent filed its brief, appellant demanded discovery on whether a labor market survey had been conducted, which respondent resisted. The hearing examiner denied appellant's request for an order compelling discovery as follows (letter dated July 26, 1990):

The parties agreed to submit this case for decision (as to the first issue) on the basis of a stipulated statement of facts. Therefore, the factual record for decision should be limited to that stipulated statement of facts unless the parties agree to augment that record. If, as Mr. Geronime asserts in his letter of June 22, 1990, Mr. Ghilardi's brief contains an "unsubstantiated assertion of fact" that does not have a basis in the stipulated statement of facts, and if respondent is unwilling to agree to augment the factual record at this time, then this factual assertion should not be considered by the Commission in reaching its decision on the first issue. Therefore, Mr. Geronime's request for an order compelling discovery is denied and he should submit his reply brief.

In the reply-brief, appellant characterizes the foregoing letter as follows:

The Commission, by letter dated July 26, 1990, refused to issue the requested order compelling discovery but ordered that the factual record for decision at this time be limited to the stipulated statement of facts and ". . . if Respondent is unwilling to augment the factual record [to include documents which would identify the extent of any competitive labor market condition study conducted], then the factual assertion [regarding the labor market conditions survey] should not be considered by the Com-

mission in reaching its decision." Accordingly, because Respondent's entire argument in Sections I and II of the Brief is predicated upon the assertion that the labor market survey did not consider the classification of Police Detective, and because the Respondent refuses to produce the labor market survey, the Commission, is precluded from considering this argument
(brackets in original)

This is somewhat of a mischaracterization of the examiner's July 26th letter, which stated, inter alia:

If, as Mr. Geronime asserts . . . Mr. Ghilardi's brief contains "an unsubstantiated assertion of fact" that does not have a basis in the stipulated statement of facts, and if respondent is unwilling to augment the factual record at this time, than [sic] this factual assertion should not be considered in reaching its decision
(emphasis added)

The examiner did not conclude that respondent's brief contained a factual assertion unsubstantiated by the record, but merely pointed out that if that were the case, such an assertion would not be considered, and thus there was no necessity for appellant to augment the stipulated record. Left unstated was the obvious point that if appellant were wrong and respondent's assertion was substantiated by the record, there also would be no basis for appellant to augment the record.

As discussed above, §ER-Pers 29.02(2)(a), Wis. Adm. Code, ("Raised minimum rate") sets forth the following prerequisite for the establishment of a raised minimum rate:

When competitive labor market conditions have been evaluated and the minimum rate is determined to be below the market rate for a class . . . the administrator [respondent], at the request of the appointing authority, may establish a raised minimum rate above the pay range minimum for recruiting, hiring and retaining employes. (emphasis added)

Respondent contends it has made no such evaluation and determination:

At no time has the respondent reviewed the labor market conditions for Police Detective. At no time has the respondent determined that the labor market conditions for Police Detective, when compared to the minimum rate for the pay range assigned to Police Detective, necessitates an RMR.

With respect to respondent's initial contention, the rule does not require that respondent DER conduct the evaluation of labor market conditions. Rather, the rule uses the passive voice: "When competitive labor market conditions have been evaluated" (emphasis added) Based on Exhibit 9 (letter

from UW-M to DER requesting raised rates) combined with respondent's response to the letter and the presumption of administrative regularity, it is reasonable to conclude that the appointing authority (UW-M) conducted an evaluation of competitive labor market conditions relevant to all of its police force including the detective classification, and determined that the minimum rates for these classifications were below the market rate for the classifications. In reliance on these actions, respondent established the raised minimum rates.

By its letter dated June 26, 1984, to DER (Exhibit 9), the appointing authority (UW-M) requested "a new raised minimum wage plan for UWM police personnel." The appointing authority cited salary data for its police employees and those of comparable area police departments. While this data, as well as UW-M retention data, related specifically to employees in positions classified as Police Officer 1-4, it can reasonably be inferred from the entire letter and the fact that UW-M requested raised rates for all police classifications, that the appointing authority's conclusions regarding retention concerns were department-wide.

In a response dated October 10, 1984, to UW-M's request for raised minimum rates, DER approved raised rates for all the requested classifications, including Police Detective, see Exhibit 3. This exhibit is a source of some confusion because while the text of the letter does not mention the Police Detective classification, the attachment to the letter shows a new, higher minimum and PSICM for Police Detective. In its brief, respondent argues:

On October 10, 1984, the respondent issued a letter creating RMR's for five classifications: Police Officer 2, 3 and 4, Police Sergeant, and Police Lieutenant. Exhibit 3. It may be logically assumed that, by taking this action, the respondent determined that the labor market conditions of these classifications, when compared to their assigned minimum rates, necessitated RMR's.

Nothing in this letter suggests that the respondent determined that there was any relationship between the labor market conditions of the classifications listed and those of Police Detective. In fact, nothing in this letter suggests that the labor market conditions of Police Detective were considered in any way.

Because the action creating RMR's effective October 14, 1984, failed to include any determination relating to Police Detective, this action does not authorize an RMR for Police Detective.

However, as noted above, the attachment to the letter shows approval of raised minimum rates for Police Detective. Also, the stipulation contains the following paragraph:

3. By correspondence dated October 10, 1984, Barbara P. Horton, Administrator, Division of Classification and Compensation, pursuant to her authority under ER-PERS 29.02(2) promulgated raised minimum rates and new PSICM for police officers at the University of Wisconsin-Milwaukee including Police Detective, pay range 13, and Police Sergeant, pay range 14. Effective October 14, 1984, the PSICM for Police Detective 13 and \$11.072/hour and the new PSICM for Police Sergeant was \$12.081/hour. See Exhibit 3, attached. (emphasis added)

If, as respondent asserts in the first paragraph of the quotation from its brief, above, it can logically be assumed that respondent determined that market conditions justified raised minimum rates for the classifications it acted on, this logical assumption also would extend to the police detective classification. This conclusion is buttressed by the presumption of administrative regularity. Respondent took action to create raised minimum rates for police detective following a request by the appointing authority that was factually supported by market and retention information. Particularly where respondent now in effect is trying to impeach the legal basis for its own act, it is appropriate to apply the presumption of regularity as against respondent's argument that the record does not show that the action was taken with the necessary evaluation and determination. However, while it can be concluded there was an evaluation of market conditions in 1984, and the minimum rate for detective was determined to have been below the market rate for that classification, this does not end the inquiry.

When the detective classification was reassigned to pay range 05-14 in 1988, and this was made retroactive to June 1984, it was necessary for salary calculation purposes to determine retroactively how this change in pay range would have factored into the various salary transactions that had occurred between June 10, 1984, and May 2, 1988. For example if an employee's salary had been affected by a 3% across-the-board pay increase pursuant to the pay plan effective July 1, 1984, it presumably would be a straightforward matter to determine what the employee's revised salary would have been if the employee's classification had been assigned to pay range 05-14 instead of pay range 05-13. The transaction in question (raised minimum rates) is more complicated be-

cause it was premised on a determination that the minimum rate for a classification is below the market rate for that classification. If the minimum rate is raised retroactively, this also could remove retroactively the basis for the raised minimum rate. For example, assume the minimum for a class is \$7.00, the prevailing market rate minimum for that class is \$8.00, and in 1985 DER raises the minimum rates \$1.00 so the pay range minimum is \$8.00. If in 1986 DER reassigns this class to a higher pay range so that the new minimum is raised \$1.00 effective in 1984, it is doubtful that the affected employees would be entitled to have the \$1.00 increase applied to the raised minimums, because the premise for a raised minimum rate would have been removed i.e., the employees would have been at the market rate (\$8.00) in 1985 prior to the raised minimum transaction.

In the instant case, while it can be inferred that in 1984 there was a labor market study and evaluation that addressed all the police classifications, at that time police detective was at pay range 05-13, so the most that can be inferred is that there was a determination that the minimum in the 05-13 pay range was below the market rate for detective. Nothing in this record shows what the specific market rate for detective was in 1984, so it is hard to understand what the basis would be for a conclusion that pay range 05-14 would have been below the market rate for detective at that time.

Appellant contends that because the police sergeant and police detective classifications were comparable in terms of the factors that go into classification determination, and both should have been at pay range 14 at the time the raised minimum rates were implemented in 1984, the police detective classification is entitled on this basis to have the raised rates retroactive applied to pay range 05-14 when it has been reassigned to that pay range on a retroactive basis. However, this does not follow.

Raised minimum rates are market-related devices. They are applied when it is determined, based on evaluation of the market, that "the minimum rate is . . . below the market rate for a class," and a raised rate is necessary for retention or staffing purposes. §ER-Pers 29.02(2)(a), Wis. Adm. Code. On the other hand, a classification is assigned to a pay range based on "the skill, effort, responsibility and working conditions required for the class," §230.09(2)(b), stats. Because two classifications are assigned to the same pay range does not mean that they are situated the same in terms of pay rates in

the market. For example, the state might evaluate prison guards the same as police officers in terms of required "skill, effort, responsibility and working conditions," and assign them both to the same pay range. This does not mean the two classifications are comparable in terms of their relationship to the market for pay purposes, as there may be more of a demand in the overall market for police officers than for prison guards.

Another difficulty with appellant's posture on this point is that when the appointing authority made the request for raised minimum rates for retention purposes in 1984, it requested an increase in the PSICM for police detective of 4% or \$.43, see Exhibit 9. The same document shows that the difference between the PSICM for police detective, then pay range 05-13, and police sergeant, then pay range 05-14, was \$.843, or 7.84%. If the appointing authority saw fit to request a 4% increase in the minimum rates for the detective classification for retention purposes, the Commission is hard-pressed to see how it can be concluded, as appellant argues, that if appellant's position had been in a pay range with a 7.84% higher minimum, there still would be a basis under §ER-Pers 29.02(2)(a), Wis. Adm. Code, to have requested a 4% increase over that rate for retention purposes.

Appellant's case is further weakened by the fact that §ER-Pers 29.02(2)(a), Wis. Adm. Code, provides: "[W]hen competitive labor market conditions have been evaluated and the minimum rate is determined to be below the market rate for a class . . . the administrator [respondent], at the request of the appointing authority may establish a raised minimum rate." (emphasis added) Even if the appointing authority requests a raised minimum rate, respondent is not necessarily required to establish it. In this case, the initial request for a raised minimum was accompanied by salary and retention data relating only to the police officer series, along with a generalized assertion that the requested action was necessary for the entire UW-M police operation for retention purposes. It is particularly difficult to understand in light of this permissive language in the rule how it follows that following the retroactive reassignment of the detective classification from pay range 05-13 to pay 05-14, which increased the minimums above the raised minimums the appointing authority had requested in 1984 for retention purposes, the Commission must conclude that the raised minimum rates are applicable to the new, higher pay range (05-13) for detective.

The Commission recognizes that on the basis of the record before it, it seems unlikely that UW-M did a market study relative to the specific classification of detective and concluded that an augmented salary structure was necessary for retention of the employees in this classification, albeit the Commission has concluded, largely by implication, that the basic requirements of §ER-Pers 29.02(2)(a), Wis. Adm. Code, were satisfied in 1984. Rather, UW-M appears to have recognized a retention problem based on the prevailing wage rates and the retention rate for Police Officers, and made a generalized conclusion that higher wages were needed for the retention of police personnel at all classifications. Given this apparently generalized approach to UW-M's request for raised minimum rates for the classifications above police officer, it is not unreasonable to argue that the transaction probably would have played out the same way in 1984 if the detective classification then had been at the 05-14 pay range rather than 05-13. However, in determining whether the raised rates are applicable to the new pay range when the detective classification is being assigned to the higher pay range (05-14) retroactively, the permissive language of the rule plays a significant role. Whereas respondent in 1984 apparently was willing to accept UW-M's broad assertions regarding the need for across-the-board salary increases for all of its law enforcement personnel for retention purposes, it cannot be said that the same result is required in 1988 when the retroactive pay range reassignment placed the police detective minimum above what UW-M had requested in 1984 for retention purposes.

Nor would there be a different result if the Commission approached this facet of the case from the perspective of respondent having the burden of proof, as appellant apparently contends². Appellant argues that to rule in respondent's favor:

[W]ould require a factual determination that the University of Wisconsin-Milwaukee administration would not have requested a minimum rate for Appellant if they had known that Appellant's pay range was 14 rather than 13. There is no evidence upon which to reach such a conclusion, but there is evidence which would refute such a conclusion. Specifically, the request for raised minimum rate included a request for the position of Police Sergeant, which the University of Wisconsin administration

²Neither party has stated explicitly its view on burden of proof. Normally the appellant has the burden of proof except in disciplinary appeals under §230.44(1)(c), stats.

knew was then in pay range 14. As previously noted, Police Detective and Police Sergeant are similar positions as to responsibility and these two classifications were in counterpart pay ranges prior to implementation of the Enforcement/Regulation Compliance Survey. Thus, the only logical conclusion which may be reached upon review of all of the relevant evidence is that the University of Wisconsin Administration would have requested a raised minimum pay range for both Police Detective and Police Sergeant, even if they were in the same pay range, as they had previously been.

To begin with, §ER-Pers 29.02(2)(a), Wis. Adm. Code, vests the authority to decide on raised hiring rates in respondent, not UW-M. Furthermore, there is evidence that UW-M would not have requested a raised minimum rate for detective had it been in range 05-14, inasmuch as that would have placed the minimum for the pay range above the level UW-M actually requested for the detective classification for retention purposes in 1984, and there is no evidence that the market rate for detective in 1984 was below the minimum of pay range 05-14. Therefore, the Commission would rule against appellant on the stipulated issue regardless of who has the burden of proof.

Respondent's final argument appears to be essentially a contention that there is no subject matter jurisdiction:

But the survey error corrected by the respondent did not involve a legal right of the appellant. The respondent is generally charged with the authority to assign pay ranges to classifications. Wis. Stats. 230.09(2)(b). The only decisions of the respondent that the appellant may appeal to the Commission, as a legal right, are decisions under Wis. Stats. 230.09(2)(a) or (d) or 230.44(1)(b).

The appellant never had a legal right to complain about the "error" the respondent made when implementing the 1984 survey. The correction of this survey error was totally within the respondent's discretion. Whether or not the correction would be retroactive was also totally within the respondent's discretion.

If the respondent had decided not to correct the "error", the appellant would have had no legal right to object. If the respondent had decided to correct the error, but not to make the correction retroactive, the appellant would have had no legal right to object.

Since the appellant had no legal right to assert correction of the survey error, or to assert that a correction be retroactive, the appellant cannot assert a right to be "made whole" by the respondent in such a way that the Commission must construct a legally authorized RMR for Police Detective retroactive to 1984

especially where no evidence exists that the respondent had ever determined that an RMR for Police Detective was necessary in accordance with the applicable rule.

It follows that if the action taken by respondent did not involve a legal right of appellant because it was not an appealable transaction under §230.44, stats., respondent in effect is arguing that the Commission lacks jurisdiction over the subject matter of this appeal. While presumably the Commission does not have to reach this argument because it has already concluded in favor of respondent on the issue that is being submitted at this time, the Commission does have certain concerns about this contention.

While it is axiomatic that objections to subject matter jurisdiction can be raised at any time, see, e.g., Morgan v. Knoll, Wis. Pers. Bd. 75-204 (5/25/76), it seems unfortunate that if this argument were going to be raised that this did not happen at an earlier point in the proceedings. The parties agreed to submit for initial decision the issue here addressed and then to proceed to other substantive issues if the first issue is resolved against appellant. It would be even more unfortunate if the parties proceeded any further in this matter, perhaps through a hearing on the merits of the remaining issues, only to have this apparent jurisdictional issue resurface at some other point, such as an objection to a hearing examiner's proposed decision, a petition for rehearing, etc. Furthermore, it would appear to be more efficacious and orderly to give appellant the opportunity to respond directly to this argument as a jurisdictional contention per se, rather than as an argument addressed ostensibly to the merits.

Therefore, the Commission will not address at this time respondent's last argument, but will direct respondent either to file a motion to dismiss for lack of subject matter jurisdiction, or a statement of position with regard to the jurisdictional basis for this appeal, unless the parties are able to reach some agreement on the nature of further proceedings in this matter that encompasses this particular topic.

ORDER

The Commission having answered "no" to the stipulated issue for decision ("Do the raised minimum rates promulgated by the Respondent, effective October 10, 1984, apply to the reassignment of the Police Detective classification to Pay Range 14, effective June 10, 1984"), it is ordered that this matter proceed to the next stage of the proceedings. It is further ordered that respondent file either a motion to dismiss for lack of subject matter jurisdiction or a statement of position with respect to the jurisdictional basis for this appeal, within 30 days of the date of entry of this order, unless in the interim the parties are able to reach agreement on the nature of further proceedings in this matter.

Dated: November 1, 1990 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT:gdt/2


DONALD R. MURPHY, Commissioner