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SARA LEE JOHANN, *

Appellant, *

v. *

Chief, LEGISLATIVE REFERENCE *

BUREAU, and Administrator, *

DIVISION OF MERIT RECRUITMENT *

AND SELECTION, *

Respondents. *

Case No. 93-0010-PC *

* * * * *

RULING
ON
MOTION

This matter is before the Commission on the respondents' joint motion to dismiss the Legislative Reference Bureau (LRB) as a party.

On February 2, 1993, appellant filed a letter with the Commission which read: "Please send me your complaint form for filing an appeal of a decision of a state agency to not hire me for a state job." In response to the letter, a member of the Commission's staff spoke with the appellant by telephone. During the conversation, the appellant stated that she "wished to pursue an appeal rather than a complaint of discrimination and... that the non-selection action was taken by the Legislative Reference Bureau." Appellant was given 10 days to submit additional information describing the action that was the subject of her appeal. On the basis of the telephone conversation and appellant's February 2nd letter, the Commission opened a case file naming LRB as the sole respondent.

On March 4, 1993, appellant filed the supplemental information with the Commission, including a copy of a letter from the LRB to the appellant dated January 6, 1993, which notified the appellant of the grade she received with respect to her application for Attorney 13-LRB vacancies, and indicated she would not be considered further for the current vacancies. In her March 4th filing, appellant requested in terms of relief that she "be hired for the stated position."

By letter dated March 12, 1993, the Division of Merit Recruitment and Selection (DMRS) requested that it be added as a party-respondent in the case.

The Commission granted this request and during a prehearing conference held on March 23rd, a motion was made to drop LRB as a respondent. During the same conference, the following issue was established¹ for hearing: "Whether the appellant's examination materials for the Attorney 13-Staff Counsel exam were objectively rated or scored."

Respondents' motion included statements to the effect that LRB provided certain assistance to DMRS with respect to the Attorney 13 examination process, but that:

the administrator of DMRS made the decisions: decided on the questions; decided on the benchmarks; decided who would be the job experts to assist DMRS; instructed the job experts on how to use the benchmarks; calculated the total raw scores; conducted a series of statistical analysis [sic] on the scoring; decided to use all the scores; broke the scores into groups; and determined the groups to be certified. LRB had no delegated authority from DMRS to make any of these decisions nor did it have delegated authority to score the Questionnaires.

Although a schedule was established for submitting briefs on respondents' motion, appellant declined to file any arguments.

The Commission's jurisdiction over exam decisions is based upon §230.44(1)(a), Stats, which provides for the:

Appeal of a personnel decision under this subchapter made by the administrator [of DMRS] or by an appointing authority under authority delegated by the administrator under s. 230.05(2).

Overall responsibility for the examination and certification process used in filling vacant classified civil service positions is vested in the Administrator of DMRS, as reflected in §§230.16, .17 and .25. Here, affidavits indicate that DMRS did not delegate any of its authority to LRB regarding the Attorney 13 recruitment. The only argument which the appellant's filings arguably raise in terms of keeping LRB as a party is in order to effectuate her requested relief of being "hired for the stated position." Pursuant to §230.44(4)(c), Stats.,

¹An issue was proposed at the prehearing and the appellant was provided 10 days to object to the proposal and offer an alternative. Appellant did not file any objection, so the proposal became the issue for hearing.

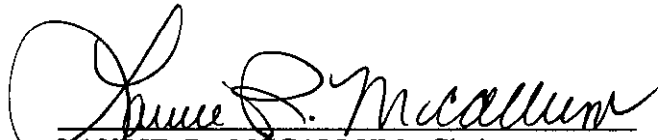
The Commission may not remove an incumbent or delay the appointment process as a remedy to a successful appeal under this section unless there is a showing of obstruction or falsification as enumerated in s. 230.43(1).

The appellant here has made no allegation under this paragraph so if the Attorney 13-Staff Counsel positions have been filled, there is no basis on which to continue to identify LRB as a respondent. In order to create a record on this point, the LRB is provided 10 days from the date of this interim ruling in which to file an affidavit indicating whether the positions in question have been filled.

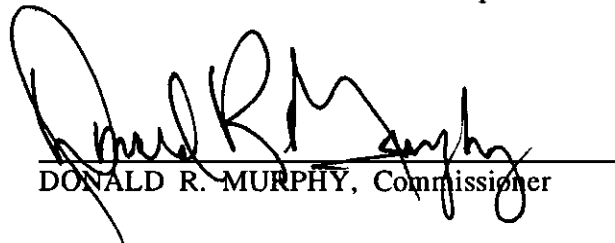
ORDER

The LRB is provided 10 days from the date of this interim ruling in which to file an affidavit indicating whether the positions in question have been filled or remain vacant. Upon filing of an affidavit indicating that the positions are filled, the respondent LRB shall be dismissed as a party.

Dated: April 30, 1993 STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

KMS:kms


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner