

STATE OF WISCONSIN

PERSONNEL COMMISSION

EARNESTINE MOSS,
Appellant,

v.

**Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,**
Respondent.

**INTERIM DECISION,
RULING ON
RESPONDENT'S
MOTION TO DISMISS A
PORTION OF THE CASE**

Case No. 97-0062-PC

Respondent raised a subject-matter jurisdiction issue at a prehearing conference held on September 25, 1997, as noted in the Conference Report of the same date. Both parties were provided with an opportunity to file briefs, with the final brief due on January 16, 1998, as measured by postmark.

The facts recited below appear to be undisputed, unless specifically noted to the contrary. The facts are made solely for the purpose of resolving the present motion.

FINDINGS OF FACT

1. Respondent reallocated appellant's position to Human Service Program Coordinator (HSPC) at the Objective level, whereas complainant felt she should have been reallocated to HSPC at the Major level.

2. The Commission received complainant's appeal on June 16, 1997. The text is shown below in relevant part (with emphasis as shown in the original):

I am writing to appeal the Reallocation decision for my position from an Administrative Assistant 4 to a Human Service program Coordinator, Objective-Mixed classification. I am Earnestine Moss, the Healthy Start Consultant, Bureau of Public Health. Over the past three years, my job duties and responsibilities have included developing brochures, providing technical assistance to 48 projects statewide, and monitoring the MCH Hotline and providing technical assistance to it as well.

This position requires the person to be flexible in their scheduling to be able to work with the counties, community-based organizations, other bureaus and divisions to meet the needs of our communities. The Administrative Assistant-4 position title was included under the FLSA exempt status. The reallocation of this position to a Human Service Program Coordinator, Objective-Mixed classification, places it under a non-exempt status. This classification restricts the flexibility of the consultant serving in this position. The Healthy Start Consultant (Administrative Assistant-4) position should have been placed under Human Service Program Coordinator, Major - Exempt classification, to

preserve its flexibility and maintain the ability to continue to adequately serve our customers.

3. The jurisdictional issue raised by respondent was described in the prehearing conference report dated September 25, 1997, as shown below:

Jurisdictional Issue: The HSPC Class Spec appears to be written in traditional format, meaning certain class levels are created and described therein. What appears to be unusual is that each position's status under the Class Spec had an impact on the position's status under the Federal Labor Standards Act (FLSA). Specifically, positions placed at the Entry level were not exempt under the FLSA, positions at the Objective level could be exempt depending on the employing agency's recommendation to DER, and positions at the Major (highest) level were exempt.

One of appellant's major concerns is that her position has been identified by her employing agency's personnel office as non-exempt under the FLSA. The jurisdictional issue is whether the Commission has authority to review exempt/non-exempt status under the FLSA.

4. The HSPC Class Spec does not indicate which classification levels may be considered as exempt under the FLSA.

5. A memo dated May 7, 1997 (copy attached to the appeal), was written by appellant's employing unit (the Department of Health and Family Services (DHFS)) and addressed the HSPC reallocations including the following pertinent information:

[N]otice the three specific classes within the Human Service Program Coordinator have differing FLSA designations (Entry-Non-Exempt, Objective-Mixed, and Major-Exempt). Employees that were reallocated into the Entry and Objective classifications are now FLSA non-exempt; therefore, you should make sure these positions are not generating unapproved overtime (i.e., working over 40 hours a week). If your division wants to change the FLSA status for a position placed at the Objective level (i.e., mixed designation), please make a formal request to BPER indicating the need/reason for FLSA exemption accompanied with the most current PD.

OPINION

An administrative agency, such as the Commission, has only those powers which are expressly conferred or which are fairly implied from the four corners of the statute under which it operates. *State (Dept. of Admin.) v. ILHR Dept.*, 77 Wis. 2d 126, 136, 252 N.W.2d 353 (1977). Pertinent to Ms. Moss' case, the Commission has jurisdiction (pursuant to the grant of authority in §230.45(1)(a), Stats.) to conduct

hearings on appeals under §230.44, Stats., the text of which is shown below in pertinent part with bracketed annotations for clarification:

230.44 APPEAL PROCEDURES. (1) APEALABLE ACTIONS AND STEPS. . . . [T]he following are actions appealable to the commission under 230.45(1)(a):

(a) *Decision made or delegated by administrator* [meaning the administrator of the Division of Merit Recruitment and Selection in the Department of Employment Relations]. Appeal of a personnel decision under this subchapter made by the administrator or by an appointing authority under authority delegated by the administrator under s. 230.05(2) [which generally pertains to recruitment and examination issues].

(b) *Decision made or delegated by secretary* [meaning the Secretary of the Department of Employment Relations]. Appeal of a personnel decision under s. 230.09(2)(a) [pertaining to classification decisions], or (d) [pertaining to an incumbent's status when the position's classification changes] or 230.13(1) [pertaining to closed records] made by the secretary or by an appointing authority under authority delegated by the secretary under s. 230.04(1m). . . .

The exempt or non-exempt status of Ms. Moss' position under the FLSA is not a subject which the Commission has statutory authority to review as is evident from the above-noted statutes. Nor has the Commission found any statutory authority for its review of questions arising under the FLSA. *Holubowicz v. DOC, 90-0048, 0079-PC-ER, 8/22/90*, and *Tiser v. DER, 84-0160-PC, 9/28/84*.

The next step in this appeal will be to schedule a status conference for the purpose of selecting a hearing date on the sole issue remaining for hearing, as noted below:

Hearing Issue: Whether respondent's decision was correct to reallocate appellant's position to Human Service Program Coordinator (HSPC) Objective, rather than HSPC Major.


The parties will be notified of the conference date by a separate mailing.

ORDER

Respondent's motion to dismiss the FLSA issue is granted.

Dated: February 11, 1998.

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

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