

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CAROL E. ALLEN, Appellant,

vs.

DEPARTMENT OF EMPLOYMENT RELATIONS, Respondent.

Case 558
No. 62777
PA(der)-20

(formerly 03-0029-PC)

Decision No. 30772

Appearances:

Carol E. Allen, College of Arts and Sciences, UW-Eau Claire, Eau Claire, WI 54702-4004, appearing on her own behalf.

David J. Vergeront, PO Box 7855, Madison, WI 53707-7855, appearing for the Office of State Employment Relations (formerly the Department of Employment Relations).

This matter was initially filed with the Wisconsin Personnel Commission (PC) as an appeal arising from the action of reallocating the Appellant's position. By letter dated July 10, 2003, the PC noted that the appeal raised a jurisdictional issue and invited the Appellant to file any arguments on that topic. The Appellant did not respond and the following findings are undisputed. 1/

1/ The PC was abolished, effective July 26, 2003, pursuant to 2003 Wis. Act 33, and the authority over this matter was transferred to the Wisconsin Employment Relations Commission. The same legislation reorganized and renamed the Department of Employment Relations which is now known as the Office of State Employment Relations in the Department of Administration.

FINDINGS OF FACT

1. At all times relevant to this matter, Appellant has been employed by the College of Arts and Sciences at the University of Wisconsin-Eau Claire.

2. Effective May 18, 2003, her position was reallocated from the Program Assistant 4 classification, pay range 2-11, into the new classification of Dean Assistant which is also assigned to pay range 2-11. Appellant did not receive a “market stratification” pay increase with the reallocation of her position.

3. In her letter of appeal dated June 26, 2003, Appellant requested the following remedies:

- 1) Revise Dean Assistant Classification to reflect an entry level pay range of 2-11 and add an advance[d] level pay range 2-12 – move previous Program Assistant employees to the Dean Assistant Advanced pay range 2-12 effective immediately.
- 2) Restore the market stratification increase based on seniority for anyone serving in the program assistant series caught in the implementation of this new title change.

CONCLUSION OF LAW

The Commission lacks subject matter jurisdiction over this appeal.

OPINION

Only certain actions taken by the Secretary of the Department of Employment Relations are appealable to the Commission. Those decisions are enumerated in §230.44(1)(b), Stats. In *KAMINSKI ET AL. V. DER*, 84-0124-PC, 12/6/84, the Commission’s predecessor agency for hearing State civil service personnel appeals, the Personnel Commission (PC), held that it lacked jurisdiction to consider contentions that the existing class specifications should be rewritten to better identify the appellants’ positions and that the particular classifications should be assigned to higher pay ranges. The PC went on to hold that it also lacked the authority to review alleged errors in position standards and pay range assignments:

Pursuant to §230.44(1)(b), Stats., the Commission may hear:

[A]ppel 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).

Of the three statutory provisions cited, appellants suggest that §230.09(2)(a), Stats., provides a basis for this appeal. That reads:

After consultation with the appointing authorities, the secretary *shall allocate each position* in the classified service *to an appropriate class* on

the basis of its duties, authority, responsibilities or other factors in the job evaluation process. The secretary may reclassify or reallocate positions on the same basis. (Emphasis added.)

Clearly, the Commission has the authority under §230.44(1)(b), Stats., to review decisions of the secretary allocating individual positions to a particular job classification. However, decisions to “establish, modify or abolish classifications” are decisions of the secretary that are made pursuant to §230.09(2)(am), Stats., which provides:

(am) The secretary shall maintain and improve the classification plan to meet the needs of the service, using methods and techniques which may include personnel management surveys, individual position reviews, occupational group classification surveys, or other appropriate methods of position review. Such reviews may be initiated by the secretary after taking into consideration the recommendations of the appointing authority, or at his or her own discretion. The secretary shall establish, modify or abolish classifications as the needs of the service require.

Personnel decisions made under §230.09(2)(am), Stats., are not among those decisions of the secretary that are appealable to the Commission under §230.44(1)(b), Stats.

The Commission has consistently held that it is bound by existing class specifications and has no authority to update the specifications even though it could be shown that they had become outdated and created salary inequities. *ZHE ET AL. V. DHSS & DP*, 80-285-PC (11/19/81), AFFIRMED, DANE COUNTY CIR. CT., 81 CV 6492, 11/2/82; *KENNEDY ET AL. V. DP*, 81-180-PC, etc.,(1/6/84). . . .

[T]he secretary’s authority to make a decision to assign classifications to a particular pay range is provided in §230.09(2)(b), Stats., which again is not one of the decisions listed in §230.44(1)(b), Stats., as being appealable to the Commission

In *GARR ET AL. V. DER*, 90-0163, etc.-PC, 1/11/91, the PC also held that it lacked statutory authority to hear an appeal arising from salary adjustments due to reallocation:

The Commission’s jurisdiction over respondent DER’s actions (as potentially material to these proceedings) is set forth in §230.44(1)(b), Stats., as hearing appeals of actions of the Secretary of DER [under] §230.09(2)(f): “If a position in the classified service is . . . reallocated . . . the pay rate of the incumbent shall be adjusted under the rules prescribed under this section.” Since §230.44(1)(b) gives the Commission authority to hear appeals of actions taken under certain enumerated subsections of §230.09(2), but that enumeration does

not include §230.09(2)(f), the conclusion is inescapable that the Commission has no jurisdiction over decisions regarding salary adjustments made in connection with reallocations.

In the matter that is presently before the Commission, the Appellant does not dispute that her position is accurately described by the Dean Assistant classification specifications. Instead, she seeks 1) the creation of an entirely new classification entitled Dean Assistant-Advanced, 2) assignment of that new classification to pay range 2-12, and 3) a “market stratification” pay increase. These are all actions that, according to KAMINSKI AND GARR, would have been outside the scope of the PC’s jurisdiction. The current provisions in §230.09, Stats., are substantially similar to those the PC recited in KAMINSKI and GARR, with the exception that the Director of the Office of State Employment Relations (OSER) now holds those responsibilities that had been exercised by the Secretary of the Department of Employment Relations (DER).

For the same reasons explained in KAMINSKI and GARR, the Commission must dismiss this matter for lack of subject matter jurisdiction.

ORDER

This matter is dismissed for lack of subject matter jurisdiction.

Given under our hands and seal at the City of Madison, Wisconsin, this 29th day of January, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

Parties:

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