

1 **BEFORE THE CITY OF SEATTLE CIVIL SERVICE COMMISSION (CSC)**
2
3

JACQUELINE SMITH

Appellant,

V.

CITY LIGHT (SCL)

City of Seattle, Respondent

MEMORANDUM DECISION

and

DISMISSAL ORDER

CSC No. 10-03-006

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5
6 **BACKGROUND**
7

8 On March 12, 2010 the Appellant Jacqueline Smith filed a Notice of Appeal with the CSC. In
9 her Notice under "Action Being Appealed", Ms. Smith checked the boxes for demotion and
10 violation of Personnel Rule. Under the rule violation Ms. Smith identified Personnel Rule 3.3.6
11 A, Manager and Strategic Advisor Pay Program, Effect of Classification or Compensation
12 Change.
13

14 In her Notice, the Appellant also stated that she "received a lateral transfer on March 2, 2010"
15 and her "pay was reduced from \$47.25 per hour to \$43.39 per hour". The Appellant argues
16 that she did not move to a position outside the Manager and Strategic Advisor Pay Program,
17 nor was her position reclassified, reallocated or designated to a classification or title outside
18 the Manager and Strategic Advisor Pay Program and that since there was only a change in
19 work units, the pay rate reduction was either a violation of Personnel Rule 3.3.6 or a demotion.
20

21 The Department responded on March 30th and April 6th and argued that the Commission lacks
22 jurisdiction over this appeal because the Appellant failed to timely utilize the grievance process
23 outlined in Personnel Rule 1.4.3. And since the process was not and cannot be exhausted,
24 per SMC 4.04.260 the Commission lacks jurisdiction over the alleged violation of the
25 Personnel Rule.
26

27 The Commission considered the appeal at its April meeting and voted to delegate the appeal
28 to the Office of the City's Hearing Examiner (HE) for a determination on the issue of
29 jurisdiction.
30

31 The Hearing Examiner issued a decision on May 17, 2010. The HE denied the appeal stating
32 that "*SMC 4.04.260. A requires an employee to exhaust the intradepartmental grievance*
33 *process before filing an appeal with the Civil Service Commission*" and "*Because the Appellant*
34 *did not exhaust the grievance process, the Commission has no jurisdiction to hear her appeal,*
35 *and the appeal must therefore be dismissed.*"
36

37 The HE also concluded "*...the Commission lacks the authority to waive the exhaustion*
38 *requirement on account of the Respondent's actions.*"
39

1 On May 26, the Appellant filed a Petition for Review of the Hearing Examiner's Decision. In
2 her Petition the Appellant argues that

3
4 "Failure to allow an extension in the timeline to file a grievance and dismissing my
5 appeal to the Commission does not resolve the question regarding the application of
6 personnel rule 3.3.5 Base Salary Determination while excluding consideration of section
7 B related to incumbent pay, 3.3.6 Effect of Classification or Compensation Change and
8 4.3.5 Transfer as it relates to the Strategic Advisor classification which is a Classified
9 Service Position. This action should also be applied in relation to SMC 4.20.080
10 Changes in incumbent status A. Transfers. Both the SMC and Personnel Rules state
11 that an employee transferred to a position in the same classification or with the same
12 maximum pay rate shall continue to be compensated at the same rate of pay."

13
14 This was followed by an addendum, received on June 4, 2010 requesting that the Commission
15 also consider the other issue in her original appeal-demotion.

16
17 SCL responded to the Petition for Review on June 4th and the subsequent document on June
18 8th.

19
20 In its June 1 response SCL request that the HE's decision be affirmed and that the
21 factual record be amended as SCL did not have the opportunity to respond to an
22 allegation that the employee told SCL Human Resources that she intended to file an
23 appeal. SCL argues that this statement is false.

24
25 On June 8, SCL responded to the Appellant's addendum arguing that the Appellant is
26 entering a new allegation, demotion and reiterated that the appeal was justly denied as
27 the Appellant failed to exhaust the internal grievance process. SCL also argued that the
28 Appellant accepted and agreed that she accepted a lateral transfer, thus there is no
29 demotion and the issue of a demotion is new, thus not timely filed.

30
31 The Appellant responded to SCL June 8 response with an email to the Commission stating
32 that SCL's response was not timely.

33 CONCLUSION/FINDINGS

34 **Personnel Rule 3.3 Manager and Strategic Advisor Pay Program, provides**

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36
37
38 *"Demotion" shall mean the movement of an employee from his or her current*
39 *classification to a classification with a lower maximum salary rate, for cause."*

40
41 *"Lateral movement" shall mean the movement of an employee from 1 position to*
42 *another position in the same classification or with the same pay zone."*

43
44 Therefore, the Appellant was not demoted, but instead was laterally moved.

45 **Personnel Rule 4.3 —Transfer, Reduction and Demotion between Classified Service** 46 **Positions, A.1, provides**

- 1 • "Classified service" shall mean all employment positions in the City of Seattle that are
2 not excluded by ordinance, City Charter, or State law from the provisions of the Seattle
3 Municipal Code and the Personnel Rules.
- 4
- 5 • "If the employee transfers to a position in the same classification, his or her status shall
6 remain the same as it was immediately before the transfer."
7

8 The Appellant is in the "classified service". It is not disputed that the employee accepted a
9 "lateral transfer". The question of a change in status is disputed. The Appellant argues that
10 she received a pay reduction as the result of a transfer from one organization unit to another.
11 The employee states that her current and previous position is Strategic Advisor 2, General
12 Government. Because the Commission lacks jurisdiction this issue is not considered.
13

14 **SMC 4.20.080, Changes in incumbent status provides**

15 *Salary step placement for employees affected by an employment action, classification*
16 *action, or compensation action shall be calculated as provided below, except that*
17 *incumbents in positions assigned to compensation programs under which the*
18 *appointing authority retains discretion for all base salary placement decisions shall be*
19 *excluded from the provisions of this section for purposes of movement between*
20 *positions in the same program or between two (2) such programs. (Emphasis added)*

21 A. *Transfers. An employee transferred to another position in the same class or having*
22 *an identical salary range shall continue to be compensated at the same rate of*
23 *pay...*

24 *Also, the Hearing Examiner found*

- 25 • *"It is also not disputed that the appointing authority in this case, i.e., City Light, and not*
26 *the Personnel Director, made the decision concerning the Appellant's compensation."*
27

28 The Appellant's position is assigned to a compensation program under which the appointing
29 authority has discretion for base salary placement, therefore subsection A does not apply.
30

31 *The Hearing Examiner found*

- 32 • *On February 19, 2010, Respondent City Light notified the Appellant by letter that she*
33 *would be offered a transfer because her current position was going to be abrogated.*
34 *The Appellant...would be transferred...Her salary would also be reduced....*
35
- 36 • *"The Appellant asked if there was a time limit on her response to the letter, and was*
37 *advised that she just needed to sign the acceptance letter by March 3, 2010."*
38
- 39 • *"Between February 19 and March 2, 2010, the Appellant discussed the transfer with*
40 *City Light managers, indicating that she disputed the decision to decrease her salary."*
41
- 42 • *"On March 2, 2010, the Appellant signed the acceptance letter, but added a handwritten*
43 *statement "with the exception of how the salary was set."*
44

- 1 • "On March 3, 2010, the Appellant's new appointment took effect".
- 2
- 3 • "On March 12, 2010, the Appellant filed her appeal with the Commission."
- 4
- 5 • "It is not disputed that the Appellant did not commence the grievance process set forth
- 6 in Personnel Rule 1.4.3 within seven days of the March 3, 2010 effective date of her
- 7 appointment, i.e., March 10, 2010."
- 8

9 And concluded

10 "The Appellant acted in good faith and with professionalism to notify the Respondent of

11 her disagreement with the decision, believing that the Respondent would at least

12 identify the existence of any other procedure that she needed to follow."

13

14 **SMC 4.04.240, Employee grievance procedure provides**

15 A. The Personnel Director shall establish rules for the presentation of non-exempt employee

16 grievances in succession, to an employee's immediate supervisor, to the division manager,

17 and to the head of the department for a written decision if necessary.

18 **SMC 4.04.070 Rights of employees provides**

19 B. Employees have the right to a timely resolution of their grievances and appeals.

20 The law provides for an internal (within the department) resolution of grievances and that

21 employees are entitled to the timely resolution of a grievance. Evidence suggests and the

22 Commission acknowledges, as did the Hearing Examiner, that the Appellant acted in good

23 faith and attempted to resolve the issues presented in this appeal internally. Although the

24 Commission lacks jurisdiction over any issues related to this appeal, laws encourage timely

25 resolution of employee grievances. The Department should feel obligated to provide an

26 opportunity for resolving any remaining issues. The Commission also strongly encourages the

27 Department to act in good faith and provide employees with detailed information on any

28 process for which the employee is obligated in the future.

29

30 In this appeal, the Hearing Examiner also found

31

- 32 • "It is not disputed that the Appellant did not commence the grievance process set forth
- 33 in Personnel Rule 1.4.3 within seven days of the March 3, 2010 effective date of her
- 34 appointment, i.e., March 10, 2010."
- 35

36 Because the Appellant did not exhaust the grievance process outlined in Personnel Rule 1.4.3,

37 and the Department is not allowing an extension for that process, the CSC does not have

38 jurisdiction over any issues presented in this appeal. And, therefore issues related to

39 violations of Personnel Rules 3.3.5; Base Salary Determinations and Personnel Rule 3.3.6,

40 Effect of Classification or Compensation Change are not considered.

41

42 The Commission however concludes that prior to the filing of this appeal, the Department had

43 many opportunities to inform the Appellant of the process required to grieve her issue. The

1 Department failed to do so and instead exploits the Appellant's failure to exhaust the process
2 as grounds for dismissing the appeal and as stated in the Appellant's Petition, does not resolve
3 the issue. Again, the Commission strongly encourages attempts for resolution.
4

5 The Department request that a "false statement" be removed from the Hearing Examiner's
6 findings. The Hearing Examiner concludes that the Appellant informed SCL staff of her
7 intention to file an appeal, the Department alleges that this is not true. This is noted in the
8 Department's Response to the Petition as well as in this decision.
9

10 **DECISION**
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13 Although the Appellant acted responsively, the Hearing Examiner found based on relative rules
14 and law "*The Commission lacks jurisdiction over this appeal, and the appeal is hereby*
15 *dismissed with prejudice.*"
16

17 The decision of the Hearing Examiner is affirmed.
18

19 The Commission does not have jurisdiction over this appeal.
20

21 **ORDER**
22

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24 The appeal is hereby dismissed with prejudice.
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27 Issued this 16th day of June, 2010
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31 FOR THE CITY OF SEATTLE CIVIL SERVICE COMMISSIONⁱ
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36 _____
37 Commissioner Ellis H. Casson

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41 Commissioner Gregg H. Hiramawa
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ⁱ Regarding further review: Commission decisions are final and conclusive unless a party of record makes application for a Writ of Review to the Superior Court of the State of Washington for King County as provided by applicable law

