

BEFORE THE CIVIL SERVICE COMMISSION
FOR THE CITY OF SEATTLE

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PRESTON HAMPTON,)
)
 Appellant,)
)
 v.)
)
 CITY OF SEATTLE CITY LIGHT)
 DEPARTMENT,)
)
 Respondent.)

No. 01-03-008

ORDER PARTIALLY DISMISSING
APPEAL AS UNTIMELY

This matter has come before me pursuant to Civil Service Commission Rule 7.03(b)(3), and upon referral by the Commission's Executive Director to determine whether the Commission has jurisdiction over the above appeal.

Having reviewed and carefully considered the file in this appeal, IT IS HEREBY ORDERED that

Appellant's Appeal No. 01-03-008 shall be PARTIALLY DISMISSED as untimely filed.

RELEVANT FACTUAL CHRONOLOGY

On January 24, 2000, Preston Hampton ("Appellant") filed an appeal to Civil Service Commission ("Commission") regarding the Personnel Department's determination of his base pay rate upon its re-classification of his position as Information Technology ("IT") Professional B. Specifically, Appellant claimed he was aggrieved because the base hourly rate allocated to him as an IT Professional B was incorrectly calculated. See CSC Appeal No. 00-03-003,

Attachment 3 to January 10, 2002 letter to Preston Hampton from Assistant City Attorney Jean M. Boler (“City Attorney letter”).¹

On February 11, 2000, while Appellant’s appeal was pending with the Commission, Respondent City Light requested a re-review of Appellant’s classification as an IT Professional B. The Personnel Department held a reconsideration hearing and Appellant, along with Fred Podesta, City Light IT Director, and Bill Schrier, DoIT IT Director, testified as well as provided documentation to support Respondent’s request for an upward adjustment to Appellant’s classification. See Addendum-Supplemental Report #00-3943 included in Classification Determination Report No. 99-3066A attached to March 20, 2000 memorandum from Nancy Schaefer, Classification/Compensation Director, to Gary Zarker, City Light Department Superintendent, Attachment 5 to City Attorney letter.

On March 1, 2000, the Commission entered an Order dismissing Appellant’s January 24, 2000 appeal pursuant to a settlement between the parties. See Civil Service Commission Order of Dismissal dated March 1, 2000, Attachment 4, to City Attorney letter.

On March 21, 2000, the Personnel Department denied reconsideration of Appellant’s classification – Appellant remained as IT Professional B effective January 5, 2000. Attachment 5 to City Attorney letter.

Appellant did not file an appeal of the Personnel Department’s denial of reconsideration and its decision to maintain Appellant as an IT Professional B at the amended rate of pay.

Fourteen months later, on May 30, 2001, Appellant sent an email to his supervisor,

¹ The appeal was filed nearly one month after Personnel Director Norma McKinney’s issuance of a memorandum to City Light Superintendent Gary Zarker that stated in part, “[t]he Personnel Rules do not allow for appeals of pay,”

Walter Warren, in which he complained of wage disparities within the IT Department. In the memo, Appellant objected to use of the Meta Survey in determining his wage.² He compared himself to five other employees, several of whom are female, and requested adjustment to remedy the inequity in wage rates. May 30, 2001 email to Walter Warren from Preston Hampton re: wage disparity, Attachment 8 to City Attorney letter.

On July 17, 2001, according to Appellant, Walter Warren conducted a salary review and base pay determination of Appellant's position. Appellant has stated that Warren provided him with information he had not been given before. Appellant, however, has not identified specifically what information or documents Warren gave him that Appellant had not known about earlier. Appellant has stated that Warren gave him the Meta survey on July 17 and told him that he was not aligned with other City Light IT employees and was the only City Light IT employee who was aligned with employees in similar positions in other departments.³ January 16, 2002 memorandum to Miriam Moses from Preston Hampton re: "Analysis of ITHR Appeal Issues - Dismissal of CSC 01-03-008".

On July 23, 2001, Appellant commenced an intradepartmental grievance process, resulting ultimately in the City's denial of Step 3 grievance on September 25, 2001.⁴ *See*

² Specifically, in his May 30 email Appellant stated, "My duties encompass those of several job titles and does not equate to the one dimensional job description of help desk supervisor from the Meta survey used in determining my wage."

³ Appellant stated, "On July 17, 2001, my supervisor, Walter Warren, presented me with a copy of a Meta Survey job description of a Help Desk Supervisor stating these are the duties my salary was based upon for market comparison."

⁴ The appeal files contains four memoranda reflecting the processing of Appellant's internal grievance – Appellant's August 22, 2001 memorandum to Fred Podesta re: "Salary Adjustment Request, Grievance Step 2"; Podesta's August 29, 2001 memorandum to Appellant re: "Grievance Step 2"; Appellant's September 5, 2001 memorandum to Norma McKinney re: "Wage Adjustment Request, Grievance Step 3"; and Zarker's September 25,

attachments to December 24, 2001 memorandum to Civil Service Commission from Preston Hampton re: "CSC No. 01-03-008 – Request To Overrule Order and Dismissal".

On October 3, 2001, Appellant filed the instant Commission appeal stating, "On Jan, 2000, ... pay was set based on market alignment without regard for differences in duties of market job compared with and others paid more for performance of similar duties and even lesser skills." CSC Appeal No. 01-03-008.

On or about January 1, 2002, according to Appellant, he became covered under a collective bargaining agreement that allegedly prohibits bargaining unit members from appealing compensation matters to the Commission. December 24, 2001 memorandum to Civil Service Commission from Preston Hampton re: "CSC No. 01-03-008 – Request To Overrule Order and Dismissal".

APPLICABLE LAW

SMC 4.04.040(B)(5) provides that

the Personnel Director shall develop and administer a system of classification of positions of employment in the City, and a wage and salary plan therefor[.]

SMC 4.04.260(A) provides in part that

[a] regular employee who is aggrieved thereby may appeal to the Civil Service Commission ... violation of this chapter or rules passed pursuant thereto; provided that the employee first exhausts his/her intradepartmental grievance remedies.

SMC 4.04.260(B)(1) provides that

[a]n appeal from an action other than a disciplinary action must be filed with the

2001 memorandum to Appellant re: "Step 3 Grievance Resolution." See attachments to December 24, 2001 memorandum from Preston Hampton to Civil Service Commission, supra. In his August 22 Step 2 Grievance memorandum, Appellant stated that Warren indicated on August 2 that he had found no reason for any adjustment in Appellant's pay.

Commission within twenty (20) days of the action appealed from.

SMC 4.04.260(D) provides that

[a] complaint alleging discrimination in violation of the City's Fair Employment Practices Ordinance shall be referred by the Commission to the rights agency of the City having jurisdiction over such complaints for its recommendation as to appropriate settlement of the case.

ANALYSIS

The issue presented is whether Appellant's appeal was timely filed when his claim is based on an action that commenced in January 2000, as expressly stated in Appellant's appeal.

The record reflects that in January 2000, Appellant filed an appeal with the Civil Service Commission about his dissatisfaction with the way the Personnel Department had calculated his base salary upon the ITHR reclassification. The record also reflects that in February 2000, both Appellant and Respondent sought reconsideration of the Personnel Department's reclassification and wage level assigned to Appellant's position. The record reflects that Appellant and two Respondent officials testified in favor of an upward adjustment to Appellant's classification and salary and provided written documentation during the reconsideration hearing. There is no dispute that in early March the parties reached a settlement on the matter at issue in Appellant's appeal pending before the Commission. The record reflects that later in March, the Personnel Department denied the reconsideration request and retained Appellant at the originally designated classification.

In accordance with SMC 4.04.260(B)(1), Appellant had 20 days in which to file an appeal to the Commission about his dissatisfaction with the Personnel Department's decision not to

upgrade his position. He apparently chose not to do so.⁵

Fourteen months passed. The record reflects that on May 30, 2001, Appellant sent an email to his supervisor, Walter Warren, objecting to what he considered to be “wage disparity” between himself and five other employees within the IT Department. *See Attachment 8 to City Attorney letter.*⁶

There is nothing in the record about what occurred or what action was taken, if any, about the substance of Appellant’s complaint to Warren in the 53 days that passed between May 30 and Appellant’s meeting with management on July 23, 2001, the first step in the intradepartmental grievance process.

In his August 22, 2001, Step 2 grievance memorandum to Podesta, Appellant stated that Warren indicated to him on August 2 that after having reviewed Appellant’s salary there was no reason for any pay adjustment. In that memorandum he again raised the issue of pay equity,

⁵ I do not find that McKinney’s memorandum to Zarker in which she states that the “Personnel Rules do not allow for appeals of pay, ...” to be a satisfactory explanation justifying Appellant’s failure to file an appeal with the Commission. Approximately one month after the McKinney memorandum was issued on December 21, 1999, Appellant filed his appeal to the Commission on the base pay rate the Personnel Department had allocated to him.

Notwithstanding my finding that Appellant cannot rely on the McKinney memorandum to justify his failure to file an appeal or institute the intradepartmental grievance in the spring of 2000, I note that Respondent does not cite any legal authority to support its position that the Personnel Department may extricate and exempt itself from the legal requirements of a municipal ordinance or prohibit or restrict employees from asserting their rights under that ordinance based on a departmental memorandum.

⁶ On its face, the information contained in the email does not appear to be new or recently discovered by Appellant or substantially different from the information that was before the Personnel Department at the time of its reconsideration of Appellant’s classification and wages in February 2000. In the email, he compares himself to five other City employees, several of whom are female, and appears to be suggesting there may be issues of pay inequity. That Appellant may be inferring gender-based pay disparity is supported by his statements in the August 22, 2001 memorandum to Podesta (*see Attachment 10 to City Attorney letter*) and in the instant appeal in which he has cited the City’s Fair Employment Practices Ordinance as one of the bases of his appeal. As per subsection (D) of SMC 4.04.260, his complaint to the extent that it contains allegations of discrimination is to be referred to the City’s Office of Civil Rights.

comparing himself with three females, Jolene Luck, Doreen McGrath and Charlyn Stennis. On September 25, 2001, Respondent denied Appellant's intradepartmental grievance at Step 3, and one week later, Appellant filed the instant appeal to the Commission in accordance with SMC 4.04.260.


Based on the evidence in the record before me, I find that Appellant's appeal filed on October 3, 2001 about the bases on which the Personnel Department determined his pay in January 2000 to be untimely. Without addressing whether there are other jurisdictional deficiencies, the appeal is timely with regard to the denial of an upward pay adjustment that apparently occurred on August 2, 2001 (notwithstanding Appellant's having invoked the intradepartmental grievance process 10 days earlier). If, however, Appellant's claim is that the decision to deny his request for a pay rate increase was motivated because of gender, or stated another way, that he has been treated differently from similarly situated female employees in the method of calculating and the amount of his compensation, then that claim must be referred to the City's Office for Civil Rights. Finally, the record before me does not contain the operative collective bargaining agreement. Therefore, I am unable to determine whether the terms of the collective bargaining agreement address retroactive application to any compensation and classification claims that were pending at the time the agreement became effective and, thus, whether Appellant is pre-empted from pursuing what remains of his appeal before the Commission.

In sum, I find that Appellant's appeal with regard to his rate of compensation, including the bases therefor, to be untimely insofar as his claim seeks to relate back prior to his supervisor's denial of a salary adjustment on or about August 2, 2001. As to his appeal of his

supervisor's denial of a salary adjustment on or about August 2, 2001, I find that part of his appeal to be timely. I make no finding as to whether there may be other jurisdictional grounds upon which Appellant's appeal could be dismissed.

FOR THE CIVIL SERVICE COMMISSION:

Date: 8 May 2002


MARILYN J. ENDRISS
Hearing Examiner pro tempore

/hampp.order part dismiss 050802.wpd

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