

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 *
 WISCONSIN STATE *
 EMPLOYEES UNION, *
 *
 Appellant, *
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 v. *
 *
 UNIVERSITY OF WISCONSIN, *
 *
 Respondent. *
 *
 Case No. 74-100 *
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 * * * * *

OPINION
AND
ORDER

NATURE OF THE CASE

This is an appeal of a unilateral grievance which was before the Personnel Board for preliminary decisions on two occasions. The respondent has again filed jurisdictional objections which this decision addresses. The findings which follow are based on findings already made in this case by the Board. The Board's Interim Opinion and Order dated 4/11/78 and Opinion and Order dated 4/19/76 are attached hereto. There have been no new factual matters adduced and so the Commission has no occasion to make new findings but rather relies on the facts previously found by the Board.

CONCLUSIONS OF LAW

1. This appeal was timely filed.
2. The Commission has jurisdiction over so much of this appeal as relates to alleged violations of Subchapter II, Chapter 16, Wis. Stats. (1975).

OPINION

The respondent argues that this appeal is untimely filed. The Commission agrees with the Board's resolution of the same objection contained

in the April 11, 1978, Decision, and overrules this objection for the same reasons given by the Board.

The respondent also argues that the Commission lacks jurisdiction to consider the appellant's claim. The Board overruled this objection in the Opinion and Order dated April 19, 1976.

It is axiomatic that questions relative to subject matter jurisdiction can be raised at any time.

The director of the Bureau of Personnel acting pursuant to Chapter Pers. 26, WAC, issued uniform standards for non-contractual employee grievance procedures. See APM, "Non-contractual Employee Grievance Procedures" effective 8/24/66, revised 10/1/74. This APM limits appeals to the fourth step (Personnel Board now Commission) to:

" ... Those complaints which allege that an agency has violated, through incorrect interpretation or unfair application:

- 1) a rule of the Director, state Bureau of Personnel or a Civil Service Statute (§16.01-16.38, Wis. Stats. [now Subchapter II of Chapter 230]), or
- 2) a function where the Director of the State Bureau of Personnel has expressly delegated his authority to the appointing officer" §I.D.1.b.1), 2).

The appeal letter in this case (letter from Bernard Metzler dated 8/31/76) simply states " ... I would like to appeal management's third step answer citing your case no. 74-100 and state statute 16.08." In its Initial Decision on jurisdiction on April 19, 1976, the Personnel Board based its ruling in favor of jurisdiction on the point that "appellant alleges that the Board of Regents has violated §16.08, Wis. Stats. by making the two positions in question unclassified."

The Commission agrees in a general sense with this Personnel Board Decision in that since there is what may liberally be construed as an allegation of a violation of Subchapter II of Chapter 16 there is a

basis for jurisdiction pursuant to the aforesaid APM and §16.05(7), Wis. Stats. (1975). The Commission also agrees with the respondent in a general sense that the Commission would lack jurisdiction over any aspects of this appeal relating to matters outside the purview of Subchapter II of Chapter 16 - e.g., Ch. 36.

There are a number of problems in dealing with this case in its present posture. As noted above, the appeal letter is very general. Also, there is not in the record at this time a copy of the grievance that was appealed.

Therefore, while the Commission will deny the respondent's motion to dismiss, it wishes to make it clear that it does not intend to extend the hearing to matters which are not within the purview of Subchapter II of Chapter 16. In order to provide some definition to the hearing, the appellant will be directed to file and serve a bill of particulars containing at least the following:

1. A copy of the grievance that was appealed.
2. An outline of the factual matters which the appellant expects to prove at hearing.
3. A statement of what sections of Subchapter II of Chapter 16 allegedly were violated, and how.

The respondent will be permitted to file and serve any objections he may have to consideration of those matters raised by the appellant, and the Commission will then provide notice of hearing, if and as appropriate.

The respondent also has objected that the Commission lacks authority to grant the remedy originally requested. In the opinion of the Commission this objection or argument does not run to subject matter jurisdiction.

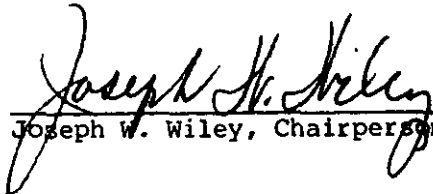
The Commission can determine what remedy, if any, is appropriate following a determination on the merits.

ORDER

The respondent's objections to jurisdiction are overruled. The appellant is directed to file and serve a bill of particulars within 30 days of the date of this order. The respondent will have 20 days thereafter in which to respond and the appellant may reply within 10 days after that.

Dated: Dec 20, 1978.

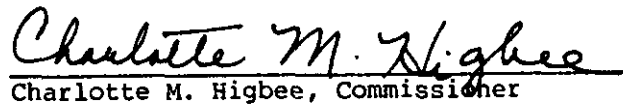
STATE PERSONNEL COMMISSION



Joseph W. Wiley, Chairperson



Edward D. Durkin, Commissioner



Charlotte M. Higbee, Commissioner