

4. The respondent's personnel office caused the termination of appellant's last period of employment because of the fact, and when it became aware of in January 1977, that the appellant's employment had for exceeded the authorized date of employment and the 1044 hours permitted by §Pers. 10.03 W.A.C.

5. Following appellant's last termination, the respondent hired another LTE to continue to perform the functions of appellant's position.

CONCLUSIONS OF LAW

1. Pursuant to §129(5), chapter 196, laws of 1977, this case must be decided by applying the law as it existed before the effective date of chapter 196, laws of 1977.

2. The appellant did not achieve permanent status in class by virtue of exceeding the approved period of employment and the maximum authorized under the Wisconsin Administrative Code §Pers. 10.03.

3. The Personnel Commission has no jurisdiction over an appeal of the termination of a limited term employe or over investigations.

OPINION

The appellant argues that because of the clearly excessive length of his employemnt and the continuing need for a full-time position that he should be accorded permanent status in class and that the Commission should review his termination pursuant to §16.05(1)(e), Wis. Stats., (1975). Appellant's argument is appealing from the standpoint of equity. However, the statues involved are clear. Section 16.11(3), Wis. Stats., (1975), provides: "No person shall be appointed... in the classified service in any manner or by any means, except as provided in this

subchapter." The Commission has been unable to ascertain any statutory means of accomplishing the result appellant seeks.

The appellant cites a Personnel Board decision in an investigation request pursuant to §16.05(4), Wis. Stats., (1975), Brodbeck v. Warren, No. 74-114 (11/25/75). There a terminated LTE argued that she had a property interest under the due process clause of the Fourteenth Amendment to the United States Constitution in continued employment. In discussing whether it should exercise its discretion under §16.05(4) and conduct an investigation, the Board noted:

"The appellant may not have achieved permanent status via the statutorily prescribed route, and she may not have established a Fourteenth Amendment interest in her position via the path of unwritten rules and understandings, but she was more than an LTE and in some ways might be considered a 'de facto' permanent employe."

Section 16.05(4), Wis. Stats., (1975), provided in part: "The Board may make investigations... concerning all matters touching the enforcement and effect of this subchapter and rules prescribed thereunder." The aforesaid discussion by the Board in the context of deciding whether to exercise this Board investigatory power is not authority for the proposition that the illegal extension of limited term employment can have the effect of creating permanent status.

Appellant also argues for the exercise of investigatory power under §16.05(4), Wis. Stats., (1975). However, this authority was not given to the Commission by chapter 196, laws of 1977, but rather it was given to the newly-created Personnel Board. See §29, chapter 196, laws of 1977; §230.06(4), Wis. Stats., (1977). The transition provisions of chapter 196 provided for the transfer of incomplete investigations

from the old Board to the new Board on July 1, 1978. §127(c). To the extent that this appeal had been identified as a request for investigation prior to July 1, 1978, it would have been transferred to the new Board on that date. The Commission has no statutory authority to process investigation requests, and therefore while the record in this case raises questions of possible abuse of LTE status, there is no statutory authority for the Commission to make further inquiry. The Commission does note that there are no time limits on the presentation of investigation requests under §230.06(4), Wis. Stats., (1977), and the appellant apparently could still request the Personnel Board to exercise its discretion and consider his investigation request.

ORDER

This appeal case is dismissed for failure of subject matter jurisdiction.

Dated: September 1, 1978.

Edward D. Durkin
Edward D. Durkin
Commissioner

Dated: Nov. 1, 1978.

Charlotte M. Higbee
Charlotte M. Higbee
Commissioner