

"Appeal of an action delegated by the administrator to an appointing authority under s. 230.05(2) shall be to the Commission."

The respondent argues that jurisdiction is present pursuant to s. 230.45(1)(c), Stats. (1977), which provides:

"The commission shall:

* * *

(c) Serve as final step arbiter in a state employe grievance procedure relation to conditions of employment, subject to rules of the secretary providing the minimum requirements and scope of such grievance procedures."

The essence of appellants' arguments is summarized in their initial brief filed February 12, 1979:

"By such rules [s. Pers. 25.01 and 25.02, WAC] the director specifically called for the establishment of grievance procedures within the Civil Service system and delegated to the departments within the state the authority to establish the same. Under the provisions of chapter 16, Wis. stats. (1975), the director's action constituted a delegation of power to the departments which by definition constituted 'appointing authorities' s. 16.02(1) and (5), Wis. stats. (1975). The same would apply to the administrator's delegations of the same power to appointing authorities under the present statutory scheme." p.6.

Prior to the revision of the civil service code by chapter 196, Laws of 1977, the only statutory provision for the non-contractual grievance procedure was found at s. 16.05(7), Stats. (1975):

"The board may be designated as the final step in a state grievance procedure."

Section Pers. 25.01, WAC, promulgated by the director provides:

"Recognizing the value of a formal grievance procedure in a sound management program, each department shall, as required by the director, establish a written grievance procedure. Such procedures shall meet standards established by the director."

It simply does not follow that the establishment of grievance procedures and the exercise of the authority to decide grievances by the appointing authorities in the context of this framework¹ constitutes the exercise of the delegated power of the director. The appellant's statement at page 8 of their brief that "the administrator had, in writing, delegated not only his power to establish the grievance procedure, but also his power to act as the step 3 or final within - Department reviewer of grievances," is, in the opinion of the Commission, without foundation. The administrator may have the power to direct the establishment of and the procedures for employee grievance procedures, but this does not include the authority to decide grievances, many of which have nothing to do with personnel matters or which are clearly responsibilities of the appointing authorities.

The appellants also argue that they have filed "appeals" of the denial of the third step grievance, that the current APM on the grievance procedure provides for appeals, not arbitration, and that:

"There exists no collective bargaining agreement which requires appellants to submit grievances to the Commission as a final step arbiter. No statutory provision or rule or regulation of the Department impose a final and binding arbitration clause of appellant." Brief filed February 12, 1979. p.9.

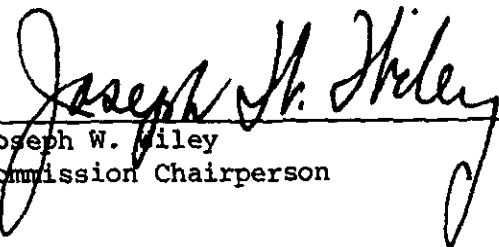
To the contrary, both s. 230.45(1)(c), Stats. (1977), and s. 16.05(7), Stats. (1975), provide authority for the board or the Commission to act as the final step or arbiter in the grievance procedure.

¹While the secretary of DER has not yet promulgated rules pursuant to s. 230.45(1)(c), the transition provisions of Chapter 196, Laws of 1977, provide for the continuation of the rules of the director until modified, see s. 129 (4q), and thus s. Pers. 25.01 and the derivative APM and departmental grievance procedures, including the University's, remain in effect.

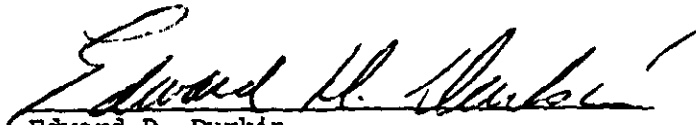
ORDER

It is ordered that these appeals be scheduled for hearing, preceded by a prehearing if necessary or appropriate, with jurisdiction pursuant to s. 230.45(1)(c), Stats. (1977).

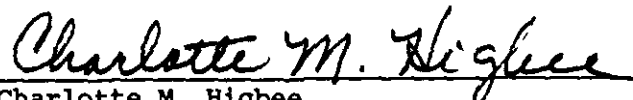
Dated: April 19, 1979. State Personnel Commission



Joseph W. Wiley
Commission Chairperson



Edward D. Durkin
Commissioner



Charlotte M. Higbee
Commissioner

AJT:skv

4/11/79