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STATE OF WISCONSIN

PERSONNEL COMMISSION

 *
 LAVERNE FODER, *
 *
 Appellant, *
 *
 v. *
 *
 DEPARTMENT OF HEALTH AND *
 SOCIAL SERVICES, *
 *
 Respondent. *
 *
 Case No. 78-185-PC *
 *

DECISION
 AND
 ORDER

NATURE OF THE CASE

This appeal relates to the assignment of an academic teacher to supervise certain of Ms. Foder's work. The respondent has objected to subject matter jurisdiction. The findings which follow are based on undisputed matter following the exchange of briefs by the parties.

FINDINGS OF FACT

- 1. At all relevant times the appellant has been an Occupational Therapy Assistant at Southern Wisconsin Center for the Developmentally Disabled, Department of Health and Social Services.
- 2. The appellant is included in the technical bargaining unit, AFSCME, Council 24, WSEU, and is subject to the contract between that union and the state.
- 3. The appellant's appeal to the commission alleges that for a number of years she operated a vocational training program for institutional residents, and that recently the institution management gave control of the program to an academic teacher.

CONCLUSIONS OF LAW

1. This case is not in a category that is directly appealable to the personnel commission.

OPINION

The respondent's objection to subject matter jurisdiction rests on §111.93(3), Stats.:

"If a labor agreement exists between the state and a union representing a certified or recognized bargaining unit, the provisions of such agreement shall supersede such provisions of civil service and other applicable statutes related to wages, hours and conditions of employment whether or not the matters contained in such statutes are set forth in such labor agreement."

However, in the commission's opinion there is a more basic problem with jurisdiction over this appeal. Laying to one side questions related to the existence of the contract and §111.93(3), the commission cannot perceive any statutory basis for a direct appeal of the action about which the appellant complains.

Section 230.44(1), stats. (1977), sets forth certain "appealable actions." The assignment of the duties in question by the respondent agency is not a decision of the administrator of the division of personnel or an action delegated by the administrator, as set forth in §230.44(1)(a) or (b). It is not a disciplinary action as set forth in subsection (c) nor is it a personnel action "related to the hiring process" as set forth in (d).

The only other potential basis for a direct appeal would be pursuant to §230.45(1)(f), if the appeal could be interpreted or amended as a request for a hearing before an impartial hearing officer under §111.91(3), stats. That subsection provides for appeals "on differences arising

under actions taken by the employer under sub. (2)(b) 1 and 2."

Subsection (2)(b) 1 and 2 are as follows:

(b) Policies, practices and procedures of the civil service merit system relating to:

1. Original appointments and promotions specifically including recruitment, examinations, certification, appointments, and policies with respect to probationary periods.

2. The job evaluation system specifically including position classification, position qualification standards, establishment and abolition of classification, assignment and reassignment of classifications to salary ranges, and allocation and reallocation of positions to classifications, and the determination of an incumbent's status resulting from position reallocations.

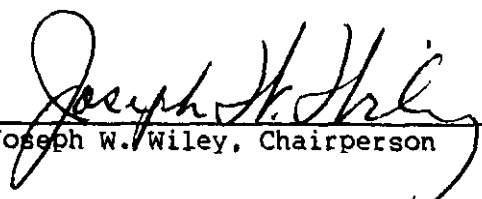
The commission cannot discern that the assignment of duties as set forth in the appeal falls within the aforesaid statutory provision.

ORDER

This appeal is dismissed for lack of jurisdiction over the subject matter.

Dated: 12/28, 1978

STATE PERSONNEL COMMISSION



Joseph W. Wiley, Chairperson



Edward D. Durkin, Commissioner