

STATE OF WISCONSIN

PERSONNEL COMMISSION

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B.D. JACOBSON

Appellant,

v.

LABOR & INDUSTRY REVIEW COMMISSION\*  
AND DEPARTMENT OF LABOR, INDUSTRY\*  
AND HUMAN RELATIONS

Respondent,

Case No. 78-192-PC

\* \* \* \* \*

INTERIM  
DECISION  
AND  
ORDER

NATURE OF THE CASE

This case is before the Commission on an appeal of personnel actions and policies of the Labor and Industry Review Commission (LIRC) and of the Department of Industry, Labor and Human Relations (DILHR). DILHR objected to jurisdiction of the basis that the appeal was not timely. LIRC does not challenge jurisdiction. This decision is limited to the issue of the timeliness of the appeal as it affects jurisdiction with respect to DILHR, and is based on briefs submitted by the parties.

FINDINGS OF FACT

1. Ms. Jacobson stated in her appeal letter and statement attached thereto that she transferred from the Supreme Court to DILHR in October, 1974; that she was employed as a hearing examiner at DILHR until September, 1976, when she transferred into the position of review attorney with the Industry, Labor and Human Relations Commission; that in July, 1977, that Commission become a separate agency, and was renamed the Labor and Industry Review Commission and that she signed a transfer form around that

time and became and continued to work as a review attorney for LIRC.

2. Ms. Jacobson states in her appeal letter that she first became aware of the contested personnel actions on August 9, 1978.

3. Ms. Jacobson filed her appeal with this Commission on September 8, 1978.

#### CONCLUSIONS OF LAW

1. Commencing July, 1977, LIRC was a unit of DILHR with separate and independent authority to carry out personnel functions, including hiring of employes and fixing their compensation.

2. This appeal is untimely with respect to alleged civil service personnel violations by DILHR.

3. The Commission does not have subject matter jurisdiction over so much of the appeal as alleges civil service personnel violations by DILHR.

#### OPINION

In a detailed brief containing lengthy statutory analysis, appellant argues that LIRC is not an independent agency under s.15.91(1), Stats., but rather is a unit of DILHR under s.15.03, Stats., without many of the powers and responsibilities allocated to DILHR by statute. Respondent argues that DILHR and LIRC exercise independent personnel functions and that independence in this particular area is determinative of whether or not the appeal is untimely as to DILHR. Appellant's general characterization of the status and responsibilities of LIRC and DILHR is not contested by respondent. The essential point argued by DILHR is that LIRC need not be an independent agency under subchapter III of ch. 15, Stats., in order to have separate

personnel functions from DILHR.

The Personnel Commission's jurisdiction in this appeal is pursuant to s.230.44, Stats., which includes appeals from actions of appointing authorities. An appointing authority is ". . . the chief administrative officer of an agency unless another person is authorized to appoint subordinate staff in the agency. . ." s.230.03(4), Stats. An agency is ". . . any state board, commission, . . . department or unit thereof . . . if such . . . is authorized to appoint subordinate staff. . ." s.230.03(3), Stats. LIRC has authority pursuant to s.101.04(3), Stats., "to employ professional and other persons to assist in the execution of its duties." This authority is clearly separate from the authority of DILHR to employ own staff under s.101.02(3), Stats. Section 101.04(3), Stats., would be completely meaningless and unnecessary if it did not confer authority on LIRC apart from DILHR. One of the elementary rules of statutory construction is that statutory language is construed whenever possible to have a specific meaning and is not construed so as to be superfluous. Therefore, a logical reading of s.101.04(3), Stats., is that LIRC has the authority and power to employ staff, separate from DILHR. The power to employ normally carries the authority to fix compensation, unless otherwise stated.

Another statutory analysis of the relation of LIRC and DILHR is through examination of ss.15.03, 15.22 and 15.225, Stats. DILHR is created pursuant to s. 15.22. LIRC is created as an attached commission of DILHR pursuant to s.15.225(1), and is attached under s.15.03. The key section is s.15.03, under which a commission is a distinct unit of the department to

which it is attached. The commission so attached "shall exercise its powers, duties and functions prescribed by law, . . . independently of the head of the department. . ." s.15.03, Stats. The power to employ staff is one of the powers of LIRC, prescribed by law under s.101.04(3), Stats. The LIRC budget is transmitted to the government by DILHR, pursuant to s.15.03 and s.15.225(1). The general provision governing "attachment for limited purposes" is s.15.03. The more specific provision governing LIRC is s. 15.225(1), and this section imposes limits on the power of DILHR to change or modify LIRC's budget beyond any limits imposed by s.15.03. It is clear from the foregoing that LIRC has power separate from DILHR to make employment decisions and determine its own budget.

Ms. Jacobson's appeal letter states that she became aware of discrimination against herself with regard to wages, on August 9, 1978. The statement attached to the appeal letter chronicles Ms. Jacobson's classification and compensation history from 1967 to the time of filing of this appeal. Even if the appeal is read to allege a continuing violation of civil service law by DILHR for the entire course of its employment relationship with appellant, the appeal is not timely. The employment relationship ended in June, 1977, when Ms. Jacobson became an employe of LIRC. The alleged continuous violations could have "occurred" no later than July, 1977.<sup>1</sup> The statutory time limit of s.230.44(3) began to run at that time.

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<sup>1</sup>The principle that the time limit for appealing from continuous violations begins to run at the time the violations are discovered, but in no case later than on the date on which the employment relationship ended, is applied in employment discrimination actions brought under Title VII of the Civil Rights Act of 1964, 42 U.S.C. s.2000e-s. See, *inter alia*: Savage v. Kibbee, 13 EPD p. 11,396 (USDC-SDNY, 1976); Dudley v. Textron, 9 EPD p. 10,046 (USDC-EDPa, 1975); EEOC v. Hickery-Mitchell Co., 6 EPD p. 8962 (USDC-EDMo, 1973).

The September, 1978 appeal is clearly untimely with respect to violation alleged against DILHR.

Appellant advances the theory that LIRC is the successor agency of its predecessor, for whom she worked from 1976-1977. The Industry, Labor and Human Relations Commission (LIRC Commission) was not the predecessor of LIRC. The ILHR Commission was the predecessor to the position of Secretary of DILHR.<sup>2</sup> The review function performed by LIRC is only one part of the overall responsibilities formerly exercised by ILHR Commission. There is no viable theory of successor liability presented in this appeal since the successor to the ILHR Commission, the Secretary of DILHR, has not been Ms. Jacobson's employer since July, 1977.

ORDER

That so much of the appeal as is an appeal of personnel actions taken by the Department of Industry, Labor and Human Relations is hereby dismissed.

Dated Dec. 4, 1979

STATE PERSONNEL COMMISSION

Charlotte M. Higbee  
Charlotte M. Higbee, Commissioner

AR:mgd

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<sup>2</sup> Compare s.15.22, Stats. (1975), with s. 15.22, Stats. (1977).