

STATE OF WISCONSIN

PERSONNEL COMMISSION

\* \* \* \* \*  
 \*  
 ROGER E. ALFF,  
 \*  
 \*  
 Appellant,  
 \*  
 \*  
 v.  
 \*  
 \*  
 SECRETARY, The Department of Revenue,  
 \*  
 \*  
 Respondent.  
 \*  
 \*  
 Case No. 78-227-PC  
 \*  
 \*  
 \* \* \* \* \*

INTERIM  
DECISION

NATURE OF THE CASE

This is an appeal of a discharge pursuant to §230.44(1)(c), Wis. Stats. (1977). On December 13, 1978, the respondent filed a "Motion to Dismiss and Alternative Motion for More Definite Statement." The appellant has moved to consolidate the hearing of this appeal with that in Case No. 78-243-PC, a companion case involving the appellant's earlier suspension. Through counsel the parties argued this motion before the Commission. The findings which follow are made solely for the purpose of deciding this motion and are based on matter in the file which appears to be undisputed.

FINDINGS OF FACT

1. The appellant's appeal letter was dated and filed with the Commission on November 8, 1978.
2. The text of said letter is as follows:  

"I, Roger E. Alff, herewith do appeal the termination of my employment as Director of the Bureau of Municipal pursuant to the attached letter dated November 6, 1978. The decision for such action was not based on just causes."
3. Also pending before the Commission is an appeal by the appellant of his suspension, Case No. 78-243-PC.

4. The allegations or grounds for suspension provided by the respondent in Case No. 78-243-PC are substantially subsumed in the allegations or grounds for discharge provided by the respondent in the instant appeal, Case No. 78-227-PC.

5. In an Interim Decision dated November 21, 1978, the Commission denied the respondent's motion to dismiss for failure of subject matter jurisdiction.

#### CONCLUSIONS OF LAW

1. The provisions regarding the content of appeals contained in §PB 1.01(2), WAC, are directory, and not mandatory.

2. The appeal letter of November 8, 1978, does not comply with all of the directory language of §PB 1.01(2).

3. Failure to comply with all of the directory language of §PB 1.01(2) is not a ground for dismissing this appeal as requested by the respondent.

4. The respondent's alternative motion for a more definite statement will enable the respondent to file a more detailed answer and obtain discovery and should be granted in the exercise of the Commission's discretion.

5. This case is appropriate for consolidation for hearing with Case No. 78-243-PC.

#### OPINION

Section 230.44, Wis Stats. (1977), is entitled "Appeal Procedures." Section 230.44(2) is entitled "FORM" and reads simply: "all appeals filed under this section shall be in writing." The rules of the Personnel Board, the predecessor agency to the Personnel Commission, are in effect

until modified or rescinded by the Commission, see Chapter 196, Laws of 1977, §129 (4m). Section PB 1.01, WAC ("appeals"), contains the following pertinent language:

"(1) FORM. Appeals shall be in writing and need not conform to any technical requirements, but should, where possible, contain the information set forth in PB 1.01(2), below ...."

(2) CONTENT. Regardless of whether or not a printed form is used, appeals should identify the person filing the appeal (the appellant) and the employing unit (if any), as well as state the facts which form the basis of the appeal, the reason or reasons why the appellant feels the act or omission appealed was or is improper, and the relief sought." (Emphasis added.)

The facts that the statute requires only that appeals be in writing, and that the rule uses the terminology "shall be in writing" in conjunction with "need not conform to any technical requirements but should, where possible, contain the information set forth ... below," make it clear that the content of appeals set forth in §PB 1.01(2) is directory and not mandatory.

The respondent has argued that because the appellant occupied a high-level professional position and has been represented by counsel he should be held to a higher standard. While this may be an appropriate factor in deciding some questions of procedure, in the opinion of the Commission, it could not provide a basis for the dismissal of an appeal for non-compliance with a directory administrative code provision.

The respondent also argues that the appeal letter violated his rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution. There has been no suggestion that the secretary of the department is involved in this appeal in other than his official capacity. The provisions of the Fourteenth Amendment

Alff v. Secretary, DOR  
Case No. 78-227-PC  
Page Four

run to state action against "persons," and its protections do not apply to the head of a state agency acting in his official capacity. See 16 Am Jur 2d Constitutional Law §558 - 559.

The respondent has moved in the alternative for a more definite statement of appeal by the appellant. The Commission believes this facet of the motion is well taken for two reasons. First, it should, as the respondent suggests, facilitate the filing of a more detailed answer. Second, the rules provide the "Parties shall have available substantially all the means of discovery that are available to parties to judicial proceedings as set forth in Chapter 804, Wis. Stats. ...." In the opinion of the Commission, the respondent would have the right to request the details sought in the request for a more definite statement through written interrogatories. Therefore, even if there were not an independent basis for granting the alternative motion, the Commission could order a response to that part of the motion by construing it as equivalent to a set of written interrogatories.

With respect to the appellant's motion to consolidate with Case No. 78-243-PC, the respondent indicated that the only basis for his objection is his position that the Commission lacks jurisdiction over that case. The respondent has already made a motion to dismiss on that ground which was denied. The motion for consolidation is appropriate and should be granted.

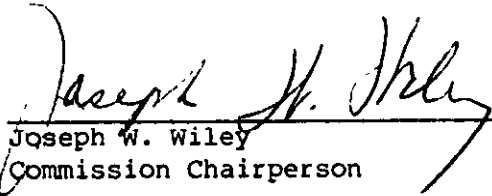
Alff v. Secretary, DOR  
Case No. 78-227-PC  
Page Five

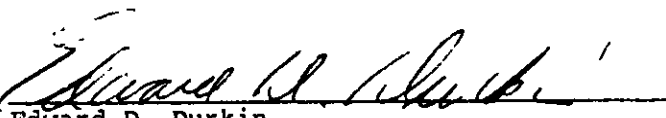
ORDER

The respondent's motion to dismiss filed December 13, 1978, is denied and the alternative motion for a more definite statement is granted. The appellant is directed to serve and file his statement within 30 calendar days of the date of this order. Appellant's motion to consolidate this appeal for hearing with Case No. 78-243-PC is granted.

Dated: Jan 18, 1979.

State Personnel Commission

  
\_\_\_\_\_  
Joseph W. Wiley  
Commission Chairperson

  
\_\_\_\_\_  
Edward D. Durkin  
Commissioner