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 \*  
 ILGA RODELL, \*  
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                   Appellant, \*  
 \*  
 v. \*  
 \*  
 THE UNIVERSITY OF WISCONSIN, \*  
 \*  
                   Respondent. \*  
 \*  
 Case No. 78-233-PC \*  
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DECISION  
 AND  
 ORDER

This matter is before the Commission on the motion of the respondent to dismiss for lack of subject-matter jurisdiction, based on the following grounds (see prehearing conference report dated December 4, 1978):

- "(1) Appellant is academic staff.
- (2) She was not discharged but had a limited-term, one-year appointment which was not renewed.
- (3) She is covered by WAC, Rules of Board of Regents, Chapter UWS-9.
- (4) Therefore, there is no jurisdiction under §230.44(1)(c), Stats."

The parties have submitted briefs on this motion. For the purpose of deciding this motion the Commission will assume all of the facts set forth in the appellant's brief dated January 18, 1979. The appellant in that brief makes a number of arguments in support of the subject-matter jurisdiction of this Commission which will be discussed in the order they are raised.

1. The appellant takes the position that the Commission has jurisdiction pursuant to §230.45(1)(c), Stats., which provides:

"The Commission shall serve as final step arbiter in a state employe grievance procedure relating to conditions of employment, subject to rules of the secretary providing the minimum requirements and scope of such grievance procedure."

The appellant argues in her brief:

"Section 5.03 of the University of Wisconsin-Madison Policies and Procedures Governing Academic Staff Appointments (hereinafter referred to as UW-Madison ASA) outlines the procedure by which a fixed-term staff appointee may appeal his or her termination of employment. This section provides that a 'nonrenewed' employe may request a conference with his or her dean at which to explain the circumstances of the nonrenewal. If the employe establishes a prima facie case that his or her nonrenewal was arbitrary or capricious, the employe is entitled to a full review by the dean and a written report of the outcome of this review. No further provisions for review or appeal of nonrenewals are made by the UW-Madison ASA.

The Personnel Commission has been authorized by the legislature to serve as the final-step arbiter in a state employee grievance procedure relating to conditions of employment. Wis. Stat., Sec. 230.45(1)(c). In light of the fact that Ms. Rodell has exhausted the grievance remedies available to her as a 'nonrenewed' employe, the Personnel Commission has jurisdiction to hear her case, in its role as the final-step arbiter in such a case." pp. 4 - 5.

The jurisdiction of the Commission under §230.45(1)(c), is limited by its terms as follows:

" ... subject to rules of the secretary providing the minimum requirements and scope of such grievance procedure." (emphasis added.)

As of the date of this decision, no such rules have been promulgated. Prior to the effective date of §230.45(1)(c), the grievance jurisdiction of the Personnel Board, which was the predecessor agency to the Commission, was governed by §16.05(7), Stats. (1975): "the board may be designated as the final step in a state grievance procedure."

Pursuant to this statutory provision, the director of the Bureau of Personnel promulgated § Pers. 25.01, Wis. Adm. Code.:

" ... each department shall, as required by the director, establish a written grievance procedure. Such procedure shall meet standards established by the director."

This administrative code provision is still in force. See §129(4 q), Chapter 196, Laws of 1977. The "standards" referred to in the code provision are contained in the Administrative Practices Manual, Department of Administration, Personnel, Bulletin Number 1, Subject: Non-contractual Employee Grievance Procedures, effective 8/24/66, revised 10/1/74. Section I. B. provides coverage to any "employee." An "employee" is defined as "any person holding a position in the classified civil service." § Pers. 1.02(6), WAC (emphasis added).

The civil service is divided into two categories, the classified service and the unclassified service. The unclassified service includes "all faculty and academic staff, as defined in §36.05(1) and (8), in the University of Wisconsin system." §230.08(2)(d), Stats. Academic staff positions are, therefore, outside the purview of the non-contractual grievance procedure.

2. The appellant argues that the Commission has jurisdiction over this matter as an appeal of a discharge pursuant to §230.44(1)(c), Stats.:

"Wis. stat. sec. 230.44(1)(c) provides in part that an employe with permanent status in class may appeal his or her discharge to the Commission if he or she alleges that such a discharge was not based on just cause. It hardly can be questioned the Ms. Rodell enjoyed permanent status in class -- after all, she occupied her position for over a year." Appellant's brief, p.6.

Laying to one side the question of whether a nonrenewal can be equated with a discharge, the problem with this contention lies in the meaning of "permanent status in class." In the opinion of the Commission, the appeal rights in §230.44(1)(c), Stats., apply only to employes in the classified service. See §230.34(1)(a), Stats.:

"An employe with permanent status in class may be removed,

suspended without pay, discharged, reduced in pay or demoted only for just cause. This paragraph shall apply to all employees with permanent status in class in the classified service, except that for employees in a certified bargaining unit covered by a collective bargaining agreement, the determination of just cause and all aspects of the appeal procedure shall be governed by the provisions of the negotiated agreement."

See also § Pers. 13.11, WAC.

The Commission makes two general observations. The appellant has noted in support of her arguments on jurisdiction that "the statutes do not contain any prohibition against the commission's exercise of jurisdiction," appellant's brief, page 7. However, administrative agencies have only those powers which are expressly granted by statute or necessarily implied. See American Brass Co. v. Wis. State Board of Health, 245 Wis. 440, 15 N.W. 2d 27 (1944), Nekoosa - Edwards Paper Co. v. Public Service Commission, 8 Wis. 2d 582, 99 N.W. 2d.

The second point is that the program responsibilities of the Personnel Commission is limited to: "subch. II of ch. 230 and ss. 49.50, 111.33(2) and 111.91(3)," §15.801, Stats. The Board of Regents of the University of Wisconsin system have, under Chapter 36 of the statutes, general responsibility for personnel matters relating to faculty and academic staff.

ORDER

This appeal is dismissed for lack of subject-matter jurisdiction.

Dated: Feb 28, 1979. State Personnel Commission

Joseph W. Wiley  
Joseph W. Wiley, Commission Chairperson

Edward D. Durkin  
Edward D. Durkin, Commissioner

Charlotte M. Higbee  
Charlotte M. Higbee, Commissioner