

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 *
 KATHRYN A. GLASNAPP, *
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 Appellant, *
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 v. *
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 DEPARTMENT OF HEALTH AND *
 SOCIAL SERVICES, *
 *
 Respondent. *
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 Case No. 78-249-PC *
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PREHEARING
ORDER

This is an appeal of the non-appointment of the appellant to a position in the classified service pursuant to §230.44(1)(d), Stats. (1977). At the prehearing conference the respondent's counsel stated that she would object to the consideration of any evidence relating to earlier non-appointments of the appellant. The parties, through their representatives, appeared before the commission and argued the question of whether this type of evidence should be admitted.

The respondent argues that the earlier non-appointments are outside the time period for appeal set forth in §230.44(3), Stats. (1977). However, the appellant is not trying to appeal these earlier transactions but rather argues that facts relating to these transactions should be considered as evidence that has probative value with respect to this transaction.

The respondent also argues that to the extent that the evidence is offered to show a pattern or practice that this properly would be cognizable as an investigation by the personnel board. However, the appellant is not asking for an investigation of these matters, she is seeking to introduce as evidence facts relating to these transactions on the theory that this evidence has some probative value with regard to the transaction

that has been appealed.

In the opinion of the commission the objections of the respondent do not run to jurisdiction but involve an evidentiary question. The determination of this question is a matter of discretion for the commission. Factors to be balanced include the probative value of the evidence offered and the problems that may be involved in having to resolve collateral issues. See, e.g., 29 Am. Jur. 2d Evidence §298; Lisowski v. Chenenoff, 37 Wis. 2d 610 (1968). In other words, even though the appellant is not asserting a claim with respect to a transaction which occurred some time ago, what frequently happens in cases of this nature is that in order to abstract anything meaningful with respect to the prior transaction, the whole matter must be tried as if it were the subject of an independent appeal.

In the opinion of the commission, it would be unduly restrictive to prohibit in a prehearing order any evidence relating to earlier non-appointments of the appellant. However, it is appropriate to indicate that in the opinion of the commission it would not be appropriate in the absence of unusual circumstances to receive evidence that would require that the whole underlying transaction in essence be litigated. This can be illustrated by some examples, which are not intended to be exhaustive. If the appellant presented evidence that in 1975, in considering a promotional appointment, the appointing authority said of the appellant "There's no way I would appoint that (expletive deleted) no matter how qualified she may be," that should be admitted. On the other hand, if the appellant offered evidence that the appellant was not appointed in 1975 despite having better credentials than the other certified applicants, it should

not be admitted. This latter example would require that the parties, in essence, litigate the 1975 transaction as if it had been the subject of an independent appeal, whereas this would not be required in the former instance. Given the amount of discretion vested in the appointing authority, there would be little, if any, probative value in the evidence related to the latter example, while the probative value of the former example might well be substantial.

The commission denies the respondent's objection with the foregoing commentary to serve as a guideline for the conduct of the hearing.

Dated: Jan 26, 1979.

STATE PERSONNEL COMMISSION

Joseph W. Wiley
Joseph W. Wiley, Chairperson

Charlotte M. Higbee
Charlotte M. Higbee, Commissioner