

STATE OF WISCONSIN

PERSONNEL COMMISSION

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THOMAS D. RAMSFIELD,  
 Appellant,

v.  
 DEPARTMENT OF NATURAL  
 RESOURCES,  
 Respondent.

Case No. 78-264-PC

\* \* \* \* \*

DECISION  
AND  
ORDER

NATURE OF THE CASE

This matter commenced as an appeal of a probationary termination. The appellant subsequently was reinstated pursuant to an agreement between the parties. The appellant took the position that the respondent had not completely complied with the agreement, refused to withdraw his appeal, and moved to amend his original appeal letter. The respondent has objected to subject-matter jurisdiction, moved to dismiss in reliance on the agreement, and objects to the motion to amend. Although the parties disagree on a number of facts, they are not in disagreement on the basic facts necessary for this decision, which are set forth in the following findings and which are based on written arguments and other documents filed by the parties.

FINDINGS OF FACT

1. This appeal was commenced by a letter from the appellant to the Commission dated November 20, 1978, which contained, in part, the following:

"I wish to appeal my recent termination from the Department of Natural Resources. I was on permissive probation....

\* \* \*

I feel that the termination was capricious and totally without just cause. On November 10, 1978, I was given a favorable performance evaluation and was told I would be given a permanent appointment. On November 6, 1978, I was called in, given an unsatisfactory performance evaluation and was handed a letter of termination effective 11/17/78."

2. On December 22, 1978, following a prehearing conference held December 20, 1978, the parties, through their representatives, reached an agreement that in consideration of the appellant's withdrawal of this appeal, he would be reinstated retroactively to the effective date of his termination with full back pay and leave credits and would be made whole for the alleged improper termination.

3. The appellant reported to work on December 26, 1978, and continued in that employment until January 12, 1979, when he commenced employment with another state agency.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this appeal.
2. The appellant's request to amend his appeal is in conflict with his attempt to enforce the settlement agreement and should not be permitted.

#### OPINION

The parties both take the position that the Commission has the authority to and should enforce the agreement. The respondent argues that it has carried out completely its part of the agreement and that

the Commission therefore should dismiss the appeal. The appellant argues that the respondent has not fulfilled the agreement because he has not been reinstated fully and made whole for the termination. It appears to the Commission that the only way this dispute can be resolved is by taking evidence as to the intent of the parties and what actually occurred upon reinstatement.

The respondent also argues that the Commission should dismiss this appeal because of lack of subject-matter jurisdiction. The original basis for subject-matter jurisdiction was the status of this matter as a probationary employe. It is argued that once the appellant was reinstated and attained permanent status in class this destroyed the jurisdictional basis.

The Commission cannot agree with this argument. It seems clear that in practical effect the appellant's employment was terminated prior to the end of his probationary period. However, the termination apparently was not effected, as required by statute, by the appointing authority. It was agreed by the parties at the prehearing conference held December 20, 1978, that the Commission had jurisdiction to determine whether the appellant indeed had attained permanent status. Thus the parties have agreed that there is some jurisdictional basis for the Commission to have heard this matter originally and that the Commission has the authority and obligation to enforce the stipulation for settlement. Under these circumstances the Commission cannot conclude that the implementation of part of the stipulation (reinstatement) can have the effect of requiring the Commission to dismiss this appeal for lack of subject-matter jurisdiction.

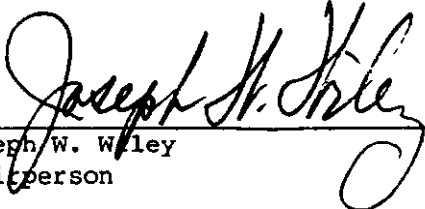
The respondent also argues that the Commission should dismiss the appeal because of mootness and estoppel based on the settlement agreement. This argument is premised on the theory that the respondent has complied completely with the agreement. The appellant disputes this premise and the Commission cannot resolve this dispute on this record.

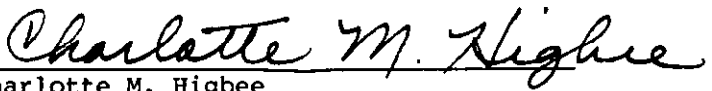
The appellant has requested, and the respondent has opposed, amendments to his original appeal. In the Commission's opinion, the appellant's attempt to amend his original appeal is inconsistent with his attempt to obtain enforcement of the settlement. The agreement was to have been in settlement of the original appeal. The appellant cannot request enforcement of the terms of the settlement that benefit him and still litigate the original appeal. To the extent that the proposed amendments raise matters that are additional to the original appeal, they would not relate back in time to the original appeal and thus would be untimely. See §230.44(3), Wis. Stats. (1977). If the appellant were seeking to repudiate or rescind the agreement in its entirety so as to be free to pursue the original appeal as if there had been no agreement, that would put the matter in a different perspective, as well as probably to raise additional issues. However, this is not the case.

ORDER

The appellant's motion to amend his appeal is denied. The respondent's motions to dismiss are denied. The Commission will retain jurisdiction over this appeal for the sole purpose of enforcing the settlement agreement between the parties.

Dated: August. 30, 1979. STATE PERSONNEL COMMISSION

  
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Joseph W. Wiley  
Chairperson

  
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Charlotte M. Higbee  
Commissioner

AJT:jmg  
8/16/79