

STATE OF WISCONSIN

PERSONNEL COMMISSION

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DAVID L. WING,

Appellant,

v.

UNIVERSITY OF WISCONSIN,

Respondent.

Case No. 78-276-PC

\* \* \* \* \*

DECISION  
AND  
ORDER

NATURE OF THE CASE

This case is before the Commission as an appeal pursuant to §230.44(1) (a), Stats. (1977), of a decision of the administrator of the Division of Personnel. The respondent has moved to dismiss for lack of subject-matter jurisdiction and the parties through counsel have filed briefs. This case is related to an earlier appeal involving the appellant and the Bureau of Personnel, case no. 77-63. The parties have attached copies to their briefs and have referred freely and without objection to the Board and Commission decisions in that matter, and the Commission takes official notice of them in making the following findings of fact.

FINDINGS OF FACT

1. On March 22, 1977, the appellant filed with the State Personnel Board an appeal of a reallocation from Administrative Budget and Management Analyst 5 to Budget and Management Analyst 4.

2. In an interim opinion and order in 77-63 dated May 26, 1978, following a hearing on the question of whether the appeal had been timely filed, the Personnel Board ruled that the appeal had been timely.

3. In a prehearing order entered in 77-63 on October 27, 1978,

the Personnel Commission determined that the only matter properly before the Commission was the question of whether the reallocation decision by the respondent was correct or incorrect based on the duties and responsibilities of the appellant's position immediately prior to the effective date of the reallocation, and that it would not be appropriate to review the decisions of the employer (U.W.) to assign or reassign duties related to appellant's position.

4. By letter dated November 15, 1978, from appellant's counsel to the director of the State Bureau of Personnel, the appellant requested a hearing pursuant to §16.03(4)(a), Stats. (1975), on the grounds, in part, that "he has been effectively demoted through actions of his appointing authority which are either illegal or an abuse of discretion."

5. By letter to appellant's counsel dated November 17, 1978, the acting deputy administrator of the Division of Personnel refused to take action on the foregoing appeal on the ground that §16.03(4)(a), Stats., had been repealed in February of that year, and stating that under the new statute, §230.44(c), any appeal of a demotion, allegedly not based on just cause, must be to the Commission.

6. In a letter to the Commission dated December 4, 1978, the appellant's attorney stated as follows:

"On October 30, 1978, we received from the Commission a seven-page Prehearing Order in the above-entitled matter. In substance, the Order indicated that certain issues which this office, on behalf of Mr. Wing, wished to raise could not be raised under the present appeal. I have taken the liberty of providing herein a copy of Page Six of that Order.

Also enclosed please find a letter we addressed to Vern Knoll, following the suggestions on Page Six on November 15, 1978.

Also enclosed please find Mr. Knoll's recent response.

Please let this letter constitute our appeal directly to the Commission under the provisions of 230.44(c) and/or 230.44(d) of the issues discussed in the recent Prehearing Order.

Let this letter also constitute our motion that this matter and the matter presently pending before the Commission as Case No. 77-63 be consolidated for the purposes of hearing. Thank you kindly.

#### CONCLUSIONS OF LAW

1. There is no basis for revising the determination made by the Commission in its October 27, 1978, decision that the appellant was not demoted, and the appeal which the appellant has requested under §230.44(1)(c), Stats. (1977), is foreclosed.

2. The transaction here appealed does not arguably fall within the purview of §230.44(1)(d), Stats., (1977), and therefore the Commission lacks jurisdiction under the provisions of that subsection.

#### OPINION

In discussing which matters were properly before it in case no. 77-63, the Commission in the prehearing order dated October 27, 1978, rejected the notion that the transaction there appealed could be characterized as a demotion. No new arguments have been advanced on this point. Laying to one side the questions raised by an attempt to invoke a jurisdictional basis under statutes which did not exist at the time of the underlying transactions in question, see Chapter 196, Laws of 1977, and particularly §129(5), the Commission does not perceive any basis for appeal under §230.44(1)(c).

The appellant also cites §230.44(1)(d) in his appeal letter. Again laying to one side problems relating to the enactment of Chapter 196, Laws of 1977, the Commission does not perceive how any of the matters

involved in this appeal could be characterized as "a personnel action after certification which is related to the hiring process in the classified service ...." The mere invocation of a statutory provision does not create jurisdiction.

The appellant also argues in the letter brief on jurisdiction from his attorney dated February 7, 1979, that the December 4, 1978, could be treated as an amendment to the original appeal:

"It is appellant's position that the letter of December 4, 1978 served in effect as an amendment or addition to the original letter, which has already been determined to be timely filed. It, therefore, raises before the Commission subject matters over which the Commission has the authority to act. The Commission, we submit, can either treat this as a separate appeal and consider our motion to consolidate for the purposes of appeal, or in the alternative, treat the letter as an amendment to the original letter of March 1977 and, therefore, serve as a further defining of the issues to be decided by the Commission.

To the extent that the December 4, 1978, letter, attempts to amend the original appeal by adding the additional jurisdictional bases, it runs afoul of Chapter 196, Laws of 1977, which became effective on February 16, 1978. Section 129(5) provides that cases filed prior to the effective date of the act and transferred to the Commission shall be decided under "prior law," which did not include §§230.44(1)(c) and (d). Furthermore, for the reasons set forth above, the Commission does not believe that this appeal presents any matter cognizable under those subsections.

The appellant also argues that the Commission has authority under §230.45(1)(c), which relates to the "state employe grievance procedure." However, there has been no suggestion that the subject matter of this appeal has been processed through the grievance procedure.

Finally, although the appellant has not argued that this case should be considered as an appeal of a decision of the administrator pursuant to §230.44(1)(a), Stats., the Commission notes that the administrator no longer had authority under §16.03(4)(a), Stats. (1975), on November 15, 1978, the date of the letter from the appellant seeking to invoke his jurisdiction under that statute.

The appellant, in this case and through case no. 77-63, alleges that the duties and responsibilities of his position were gradually eroded by a series of management decisions and actions. During the course of this process, no attempts were made to grieve or appeal these matters. At the end of the process, the position was reallocated. As was pointed out in the October 27, 1978 prehearing order, the Commission does not have the authority on an appeal of the reallocation to look back over this process and review all of the management decisions and actions that allegedly resulted in the erosions of the position to the point of a negative reallocation:

"It is clear from these statutes that the framework for the Civil Service provided by the legislature calls for appointing authorities to assign duties and the Director to make classification decisions based on an evaluation of those duties. The appellant alleges that certain duties were removed from his position by the appointing authority as part of an effort by that authority to discipline him. The Commission on this appeal is reviewing a decision of the Director regarding the appropriate classification of a position based, in large part, on the duties and responsibilities assigned to that position. It is not appropriate for either the Director or the Commission, on review of the Director's decision, to delve into the soundness or motivation of the decisions that were made by the appointing authority to assign or reassign duties. Such an inquiry would be inconsistent with the statutory framework discussed above.

ORDER

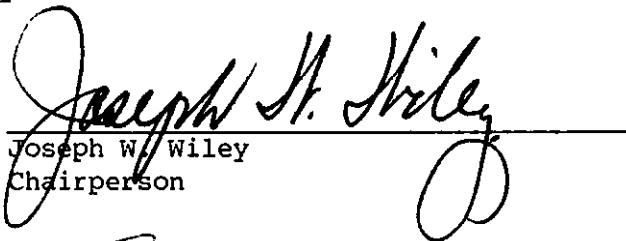
This appeal is dismissed for lack of subject-matter jurisdiction.

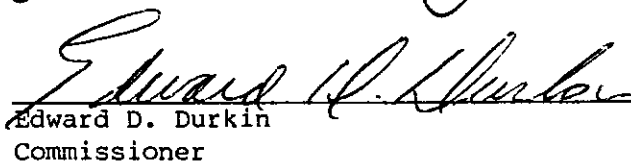
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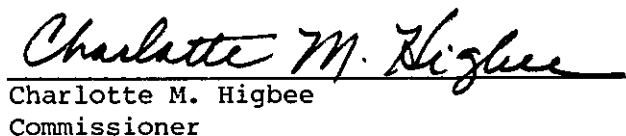
April 19

, 1979.

STATE PERSONNEL COMMISSION

  
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Joseph W. Wiley  
Chairperson

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

  
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Charlotte M. Higbee  
Commissioner

AJT:jmg

4/11/79