
JAMES MATTHEWS,
Appellant,

v.

DEPARTMENT OF HEALTH AND
SOCIAL SERVICES, and
DIVISION OF PERSONNEL,
Respondents.

Case No. 78-38-PC

DECISION

NATURE OF THE CASE

This is an appeal of certain personnel transactions relative to selection processes for certain newly-created positions in the Division of Community Services, DHSS. The respondents have filed a motion to dismiss for lack of subject matter jurisdiction on the grounds that (1) the appeal was untimely filed and (2) the decision appealed from was made under and pursuant to the provisions of Sub-chapter 2 of Chapter 16 of the Statutes (1975) and no provision of Chapter 196 of the Laws of 1977 grants to the Personnel Commission jurisdiction to hear appeals taken from decisions made under Subchapter 2 of Chapter 16, Stats. (1975), when said appeals were filed with the Commission subsequent to the effective date of Chapter 230 of the Wisconsin Statutes. This decision deals only with this motion to dismiss.

FINDINGS OF FACT

1. The appellant's appeal letter was filed with the State Personnel Board on April 14, 1978.
2. In that letter the appellant stated that he wished "to appeal what appears to be inequitable personnel practices in the assigning of staff to

certain newly created positions in the Division of Community Services."

3. In summary this appeal letter alleged as follows: the new area administrator positions were allocated to pay range 1 - 16 with the exception of the area administrator for the Milwaukee region which is allocated to pay range 1 - 17. This latter position was filled by lateral transfer without competition while the pay range 1 - 16 positions were filled by competitive promotional examination with consideration of employees formerly employed as Chiefs of County Administration, Division of Family Services on a transfer basis following job interviews along with certified applicants.

4. The appeal letter contained the following request for relief:

"It is respectfully requested that a finding be made that the former Chiefs of County Administration (former Division of Family Services) are discriminated against by the requirement to engage in a competitive examination and/or job interview. It is also requested that an order issue requiring the Division of Community Services to accord equal treatment to former employees of the former Divisions of Family Services and Mental Hygiene who were assigned to position responsibilities comparable to those of the Area Administrator, Division of Family Services."

5. The vacancies for the pay range 16 Area Administrator positions were announced January 26, 1978.

6. The decision that there would be a competitive promotional exam for this position was made no later than January 26, 1978.

7. The appellant submitted his application for these positions on February 2, 1978.

8. The appellant had notice no later than February 2, 1978, that there would be a competitive promotional exam for these positions.

CONCLUSIONS OF LAW

1. There exists statutory authority to hear this appeal under Chapter 196, Laws of 1977.

2. This appeal was not filed in a timely manner and must be dismissed.

OPINION

The effective date of Chapter 196, Laws of 1977, was February 16, 1977. Thus, this case presents a situation where a personnel decision which occurred before that date, and of which the appellant had knowledge before that date, was appealed after the effective date of the new law. The respondent argues that the Personnel Commission lacks jurisdiction to hear this kind of appeal!

The Personnel Commission can hear appeals brought under Chapter 16, Stats., (1975) only if they are transferred under Chapter 196. Cases are transferred under "this act" (Chapter 196) only as provided in Section 127.

Section 127(1)(b) reads as follows:

"Personnel Board appeals. All records of the Department of Administration related to Personnel Board appeals processed as of the effective date of this act under Section 111.91(3) and Sub-Chapter II of Chapter 16, 1975 Stats., are transferred to the Personnel Commission, as created by this act. Until July 1, 1978, all records of such appeals completely processed by the Personnel Board after the effective date of this act shall be transferred to the Personnel Commission as completed. On such date all records of such appeals shall be so transferred whether or not they are completed."

The plain and unambiguous language of Section 127(1)(b) provides that only the appeals filed with the Personnel Board, created and existing pursuant to Section 15.101(3), Stats., (1975), prior to February 16, 1978 can be transferred to the Personnel Commission. Matthew's appeal was filed subsequent to February 16, 1978. It should be noted that the word "such" in the second and third sentences of Section 127(1)(b) clearly refers only to appeals "processed as of the effective date of this act." Matthew's appeal was not processed by the Personnel Board prior to the effective date of Chapter 196. Since Matthew's appeal cannot be transferred under this act, the Personnel Commission has no jurisdiction to hear his appeal. (letter of 9/22/78, emphasis supplied).

The Commission disagrees with this interpretation and particularly with the underlined section. If the language suggested by the respondents were to be inserted in place of "such" the result would not be logical:

"All records of the Department of Administration related to Personnel Board appeals processed as of the effective date of this act under Section 111.91(3) and Subchapter II of Chapter 16, 1975 Stats., are transferred to the Personnel Commission, as created by this act. Until July 1, 1978, all records of appeals processed as of the effective date of this act completely processed by the Personnel Board after the effective date of this act shall be transferred to the Personnel Commission as completed. On such date all records of appeals processed as of the effective date of this act shall be transferred whether or not they are completed."

No such illogical result is reached if "such appeals" is interpreted as "Personnel Board appeals." This interpretation is also consistent with the fact that each sentence of the subsection contains language relative to the stage of completion of the appeals. Utilizing this approach, the last sentence of Section 127(1)(b) provides authority for transfer of this appeal to the Commission.

Section 129(7) of Chapter 196 reads as follows:

"Notwithstanding the repeal of Section 15.101(3) of the statutes by this act, the Personnel Board created under §15.101(3), 1975 Stats., shall continue to function until July 1, 1978, for the limited purpose of processing the appeals filed with it prior to the effective date of this act under Section 111.91(3) and Subchapter II of Chapter 16, 1975 Stats."

The respondents make the following argument relative to this subsection:

The former Personnel Board had no jurisdiction whatsoever - including jurisdiction to transfer appeals to the Personnel Commission - over appeals filed subsequent to February 16, 1978. In fact the Board only existed for the limited purpose stated in Section 129(7). Matthews' appeal was filed on April 16, 1978, and accordingly the Personnel Board had no jurisdiction to transfer or otherwise process it. (Emphasis added).

The respondents' argument rests on the theory that since the Board lacked

the authority to process this appeal it lacked authority to transfer it to the Commission. However, "process" and "transfer" are not synonymous. It is clear that the Personnel Board had the authority until July 1, 1978, to process completely cases filed before February 16, 1978, and this processing included final disposition and decision on the merits. The transfer of incomplete cases to the Commission is, on the other hand, a limited and ministerial action. In the Commission's opinion there is no inconsistency between saying that the Board lacked authority to process this appeal but had authority to transfer it to the Commission for decision by it.

While the Commission disagrees with the construction of Chapter 196 argued by respondents based on an evaluation of the statutory language on its face, it also notes that the respondents' construction is directly contrary to any possible legislative intent.

Laying to one side the respondents' objections to timeliness, their position leads to the creation of a vacuum in state civil service appeals. For example, if the appellant had filed his appeal on February 17, 1978, it would have been timely under either the 15 day limit of §16.05(2), Stats., (1975) or the 30 day time limit of §230.44(3), Stats. (1977). However, under the respondent's statutory interpretation he would have no appeal rights. Another example is an employee given notice of immediate discharge on February 15, 1978. Pursuant to respondent's theory there would be no appeal of that action unless the appeal was filed that same day, February 15, 1978. In fact, the application of appellant's theory could lead to situations where there would be no possibility of an appeal at all. If for example a transaction occurred before February 16, 1978, but notice was not given to the employee until after that date.

These results are unreasonable and indeed irrational, and the Commission cannot ascribe an intent to the legislature that would yield such consequences. Rather, a construction of Chapter 196 that would lead to such results must be considered to be directly opposed to legislative intent.

With respect to the question of timeliness, it is undisputed that the decision to utilize a competitive promotional exam to fill the range 16 positions was made no later than January 26, 1978, when the exam was announced. It is also undisputed that the appellant was aware of this no later than February 2, 1978, when he filed his application. It is uncertain exactly when the appellant had notice of the filling of the range 17 position (Milwaukee Area Administrator). However, the appellant made it clear at the conference held October 26, 1978, that the focus of his appeal was on the failure to make appointments to the range 16 positions in the same manner as the range 17 appointment was made and he was not seeking review of the range 17 appointment process per se.

Regardless of whether one applies the 15 day time limit set forth in §16.05(2), Stats. (1975) or the 30 day time limit set forth in §230.44(3), Stats. (1977), the appeal filed April 14, 1978, was untimely. Not being timely filed the appeal must be dismissed. See Oda v. Personnel Board, 250 W. 600 (1947).

ORDER

The respondent's motion to dismiss is denied as to the ground that there is no statutory authority to hear this appeal and granted as to the ground that the appeal was not timely filed, and this appeal is dismissed.

Dated: _____

Dec 20, 1978.

STATE PERSONNEL COMMISSION

Joseph W. Wiley

Joseph W. Wiley, Chairperson

Edward D. Durkin

Edward D. Durkin, Commissioner

Charlotte M. Higbee

Charlotte M. Higbee, Commissioner