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ARLIN LEONHARDT,

Appellant,

DEPARTMENT OF HEALTH
SOCIAL SERVICES,

Respondent.

Case No. 79-171-PC

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DECISION
AND
ORDER

NATURE OF THE CASE

This case is an appeal from a decision of the appointing authority to retire Mr. Leonhardt upon his reaching mandatory retirement age. In the appeal letter, Mr. Leonhardt characterized his appeal as one of a layoff decision. Respondent moved to dismiss the appeal for lack of subject-matter jurisdiction on the ground that there is no appealable action under §230.44 and 230.45, Wis. Stats.

CONCLUSIONS OF LAW

1. This is an appeal from the decision of the appointing authority to request the mandatory retirement of appellant.
2. Where, as here, nothing more than the fact of retirement is alleged, the Personnel Commission does not have jurisdiction to review on appeal the decision to mandatorily retire an employe.
3. The Personnel Commission does not have jurisdiction over the subject matter of this appeal.

OPINION

Mr. Leonhardt's letter appeals "the decision of Secretary Percy, requesting my mandatory retirement" The letter also alleges

that Commission jurisdiction to hear the appeal is based on its jurisdiction over appeals from layoff decisions.

This Commission does not require an unrepresented appellant to specifically state the statutes and rules which they believe were violated in a particular personnel transaction. The policy and practice is to liberally interpret pleadings, particularly where the appellant is unrepresented. Nevertheless, the appeal must set out some allegation which gives rise to a need for interpretation. Appellant wishes to appeal his mandatory retirement. This aspect of employment is not governed by Subchapter II of Chapter 230, Wis. Stats., but rather is governed by Ch. 41, Wis. Stats. Appeals from actions taken pursuant to Ch. 41, Wis. Stats., are not included under the jurisdiction of the Personnel Commission, as set forth in §§230.44 and 230.45, Wis. Stats.

The Commission has taken jurisdiction of appeals involving mandatory retirement decisions where appellants factually alleged what could have been violations of civil service laws in connection with the retirement decisions, such as sufficiency of notice or the true purpose of the retirement (i.e., reduction of the work force). In these cases the appeal letters were open to interpretation as to questions raised, other than those relating to mandatory retirement. Sandstrom v. Schmidt, No. 73-158 (1/2/75); Neitzel v. Carballo, No. 73-32 (8/23/76). The present case does not meet those criteria. Appellant requests a hearing on his appeal from the decision to retire him and asserts Commission authority to hear such appeals as appeals

of layoffs. The mere characterization of a retirement as layoff does not confer jurisdiction on this Commission. Respondent points out in its brief supportive of its motion to dismiss that conditions which justify layoffs are set out in Wis. Adm. Code, Sec. Pers. 22.03. Appellant does not contest the fact that he was retired upon his reaching the mandatory retirement age for his occupational group. This is not a condition which justifies a layoff. Although "layoff" is not defined in the statutes, the administrative rules governing layoffs do indicate the nature of this particular form of termination of employment. Layoffs are justified by the changed condition(s) of the employer, not the employe. Section Pers. 22.03. Alternatives to termination are permitted and are to be made available to the employe. Section Pers. 22.04. The layoff decision is specifically appealable. Section Pers. 22.05 and §230.44(1)(c), Wis. Stats. The employe has recall, restoration and reinstatement rights after layoff. Sections Pers. 22.055, 22.065. Using these conditions and qualifications as a way of defining a layoff, it is clear that a mandatory retirement of an individual is not a layoff and therefore, is not appealable to this Commission under §230.44(1)(c), Wis. Stats.

ORDER

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

Dated: Dec. 4, 1979. STATE PERSONNEL COMMISSION

Charlotte M. Higbee
Charlotte M. Higbee
Commissioner

AR:jmg

11/16/79