

STATE OF WISCONSIN

PERSONNEL COMMISSION

\* \* \* \* \*  
 \*  
 MARY T. MEREDITH, \*  
 \*  
                     Appellant, \*  
 \*  
 v. \*  
 \*  
 Secretary, DEPARTMENT OF HEALTH \*  
 AND SOCIAL SERVICES, \*  
 \*  
                     Respondent. \*  
 \*  
 Case No. 79-172-PC \*  
 \*  
 \* \* \* \* \*

INTERIM DECISION  
and  
ORDER

OPINION

This matter is before the Commission on the respondent's motion to dismiss for failure of subject-matter jurisdiction, both parties having filed briefs.

Both parties' briefs have focussed on the question of whether the Commission has jurisdiction over this matter as an appeal pursuant to §230.45(1)(c), Stats., of a non-contractual grievance. However, there is no indication that this matter was ever processed as a non-contractual grievance by the agency. The appeal document that was filed with the Commission was an "employe contract grievance report" form with the words "employe contract" crossed out and the word "unilateral" written in. Grievance step "1" was circled on the form. Thus, although the appeal may have been characterized as a unilateral grievance, it actually is an original appeal with the Commission

The Commission has held that until the secretary of the Department of Employment Relations promulgates new rules providing

the minimum requirements and scope of the non-contractual grievance procedure, the Commission will look to the existing grievance procedure to determine what cases it can hear. See, e.g., Gohl v. DOR, 79-67-PC (11/22/79). The existing Administrative Procedures Manual which contains the standards for agency grievance procedures provides for a decision by the employing agency at the third step before an appeal and review at the fourth step. The Commission cannot have jurisdiction over this matter as a grievance under §230.45(1)(c), without there ever having been a grievance presented to the agency.

The gist of this appeal as stated is:

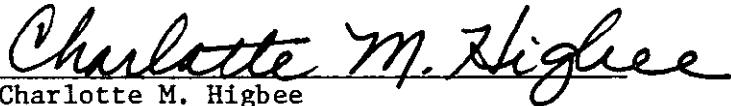
"On or about April 1, 1975, the grievant assumed the duties of Voc. Rehab. Counselor I although continued to be paid and classified as CSA IV.... The grievant was told verbally she would be reclassified but was not. Periodic verbal requests to supervisory staff resulted in nothing but continued promises. On or about May 5, 1979, the grievant learned of a(n)... examination... on one hand promised a re-class and on the other expected to compete." Appeal document dated July 9, 1979, and filed July 11, 1979.

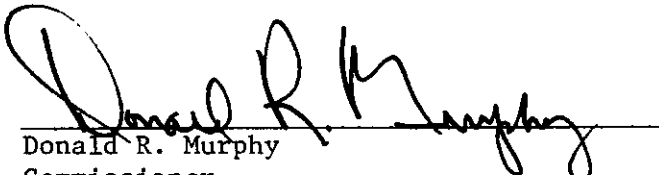
If this is interpreted as an appeal, c.f., Wech v. DHSS, 79-310-PC (1/14/80) of a failure or denial of reclassification, there is a problem of timeliness. Section 230.44(3), Stats., requires that appeals be filed not later than 30 days after the effective date of the transaction or after the date of notice, whichever is later. Here, the appellant never appealed the failure or refusal to reclassify until some two months after the date (May 5, 1979) when she became aware that she would be required to compete to move to the higher classification, and thus the appeal would be untimely. It also is noted that for similar reasons this matter would have to be considered untimely even if it could be construed, (which for reasons discussed above it cannot) as a grievance under §230.45(1)(c), Stats.

ORDER

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

Dated: March 24, 1980. STATE PERSONNEL COMMISSION

  
Charlotte M. Higbee  
Commissioner

  
Donald R. Murphy  
Commissioner

AJT:arl  
2/14/80