

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *
JOHN STASNY,
Appellant,
v.
Secretary, DEPARTMENT OF
TRANSPORTATION,
Respondent.
Case Nos. 79-192, 253, 259-PC
* * * * *

INTERIM
DECISION

NATURE OF THE CASES

These consolidated appeals are ostensibly before the Commission pursuant to s. 230.45(1)(c), Stats., as appeals of non-contractual grievances. The respondent has moved to dismiss on the ground that the Commission lacks jurisdiction over the subject matter of the appeals, and the parties, through counsel, have filed briefs.

OPINION

There is no dispute as to the basic facts relating to jurisdiction. By letter of August 14, 1979, the respondent notified the appellant of the termination of his employment effective August 13, 1979, because of the appellant's "decision not to report to work at the State Patrol Academy as directed following the expiration of a leave of absence."

The appellant submitted non-contractual grievances at the first step as follows:

August 24, 1979 - This included, in part, the following statement by the appellant:

"On August 10, 1979. . .I requested an extension of my

leave of absence. That request, however was denied on August 13, 1979 and I received the denial on August 16, 1979. Under these circumstances, the denial of my leave of absence request was procured by an incorrect interpretation or unfair application of the Civil Service Statutes and Administrative Rules."

August 15, 1979 - The appellant stated in this grievance, in part, as follows:

"On August 6, 1979. . .I received notification that I had been involuntarily transferred to the State Patrol Academy at Fort McCoy. . .The Department extended my reporting date until August 13, to obtain my doctor's approval, but the doctor would not approve of my transfer at that time. This transfer was implemented in any event. . .My transfer was, therefore, procured by an incorrect interpretation or unfair application of the Civil Service Statutes and Administrative Rules."

August 24, 1979 - In this grievance the appellant stated, in part, as follows:

" On August 2, 1979, I requested that I be allowed to exercise my transfer or bumping rights. . .This request. . . was denied on August 13, 1979, in the form of a letter of termination from my employment. This letter was received on August 16, 1979. This refusal to allow me to exercise my transfer or bumping rights was procured by an incorrect interpretation or unfair application of the Civil Service Statutes and Administrative Rules."

These grievances were denied on the grounds that the appellant's employment was terminated August 13, 1979, and that the departmental grievance procedure was available only to current DOT employees.

As part of her argument in support of her motion to dismiss, respondent's attorney states:

"The grievant. . .was discharged by the respondent effective August 13, 1979. He was, therefore, not an employee of the respondent on the dates on which he filed the three grievances. . .the grievance procedure by its terms is not available to the grievant after his discharge and the Commission cannot assume jurisdiction to act as the fourth step."

In the opinion of the Commission, the grievance procedure is not by its terms "not available to the grievant after his discharge. . ." The DOT non-contractual grievance procedure (TAM 412-1), a copy of which was submitted by the respondent as Exhibit 1, defines "grievant" as "Employee(s) expressing a grievance." There is nothing in the procedure that indicates whether an "employee" must be in that status at the time of the matter complained of or the time the grievance is filed. However, on pages 3 and 4 it does state "Employees who voluntarily terminated their employment will have any grievance(s) in process immediately withdrawn. . ." This explicit reference to voluntary terminations militates against an argument that the Commission should interpret or infer from the procedure that it is unavailable to a person who was employed at the time of the transaction but who was terminated prior to the time of filing a grievance.

There also are policy factors favoring the interpretation of the procedure urged by the appellant. If potential grievances can be avoided by the termination of the employee, this could encourage agencies to terminate employees for this purpose. Compare, Schmid v. DOT, Wis. Pers. Bd. No. 77-177 (2/20/78).

Given the plain language of the grievance procedure and the policy factors involved, the Commission cannot conclude that the procedure is unavailable to an employee who, like the appellant, was terminated following the transactions sought to be grieved but prior to the filing of the grievances.

The Commission will remand these matters to the department to provide substantive answers to the grievances. While the appellant has suggested that this step be dispensed with, the Commission must have a third step

answer to review. However, the Commission does note that it would appear likely in the context of these and other related cases that management has had the opportunity to review to some extent the substantive issues presented by these appeals. Also there are scheduled for hearing on January 23-25, 1980, related cases numbered 78-PC-ER-47, 79-217-PC, and 79-218-PC. The Commission believes that because of the interrelationship among all of these cases it would be desirable and efficacious to consolidate all of them, including these three grievance appeals, for hearing January 23-25, 1980. Notice of hearing of the grievance appeals cannot be provided until the grievances are answered at the third step and the appellant appeals, because the answers and appeal will define the scope of the issues. While notice therefore cannot be provided at least 10 days before the start of the hearing, see s.227.07(1), Stats., in light of all these considerations the Commission would urge the parties to seriously consider waiving the first two steps of the grievance procedure and agreeing to a shortened period of notice so that all of these cases can be heard in a consolidated manner commencing January 23rd.

ORDER

The respondent's motion to dismiss for lack of subject matter jurisdiction is denied and these matters are remanded to the respondent for processing and responding substantively to the grievances.

Dated Jan. 14, 1980

STATE PERSONNEL COMMISSION

AJT:mgd

Charlotte M. Higbee
Charlotte M. Higbee
Commissioner