

STATE OF WISCONSIN

PERSONNEL COMMISSION

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SUSAN SCHEIN,

Appellant,

v.

Secretary, DEPARTMENT OF  
HEALTH & SOCIAL SERVICES,

Respondent.

Case No. 79-370-PC

\* \* \* \* \*

INTERIM  
DECISION  
AND  
ORDER

NATURE OF THE CASE

On December 26, 1979, the Personnel Commission received an appeal from Ms. Susan Schein, 1354 Sunset Road, Apt. 213, Port Washington, Wis., alleging, inter alia, that on November 20, 1979, she was interviewed as a candidate for an English teacher position at the Waupun Correctional Institution and that the interview was improper and not relevant as a selection process.

At the prehearing conference held on March 19, 1980, the respondent objected to the jurisdiction of the Commission grounded upon statutory limits for filing such appeals.

The parties filed memoranda on respondent's objection. Accordingly, the Findings of Fact and Conclusions of Law are based upon the memoranda and record.

FINDINGS OF FACT

1. At some time prior to November 20, 1979, a job opened at Waupun Correctional Institution for an English teacher. The appellant applied

for the position, was certified and interviewed. The interview took place November 20, 1979, at the institution.

2. On November 21, 1979, the appellant was notified by letter from the Personnel Manager of the institution, a Mr. Glenn R. Weeks, that she had not been selected for the position.

3. The appellant, having been dissatisfied with the interview wrote Mr. Weeks on November 24, 1979, requesting directions for appealing the method used to interview her as a candidate to the position. Again on December 7, 1979, appellant wrote Mr. Weeks reminding him of her previous letter in which she had requested directions for appealing the interview process for the English teacher position. The appellant also advised Mr. Weeks that she would be in Madison on December 26, 27, or 28th, 1979, and inquired as to whether or not there was someone in Madison to whom she could officially appeal.

4. On December 11, 1979, Mr. Weeks wrote the appellant acknowledging her letter of November 24, 1979 and said that he would be willing to discuss the interview process with her. He provided his telephone number to which she was told she could call collect. Mr. Weeks' letter is in part as follows:

"...After our discussion, if you do not feel that we have responded to your concerns and wish to proceed with the appeal the procedure is as follows..."

5. The appellant, on December 19, 1979, met with Mr. Weeks and talked about her concerns over the method of interviewing her for the job as an English teacher at the institution. She was dissatisfied with Mr. Weeks'

response and, in accordance with his earlier directions, on that same day appealed to the Commission. The Commission received the appellant's letter of appeal December 26, 1979.

OPINION

Consideration of appellant's claim that she made a timely appeal to the Commission centers upon the point in time when the respondent notified appellant of its final decision regarding the method in which the appellant was interviewed for the teaching job at Waupun. It is noted in Finding of Fact 4 that Mr. Weeks, i.e. respondent's representative, requested the appellant to discuss with him for concerns about the interview, after which, if dissatisfied, she could appeal to the Commission. At best this language of the latter read together with the instructions given for appeal is equivocal. As in Van Laanen v. State Personnel Board, Dane County Cir. Ct., Case No. 145-395, it is not inconsistent with the possibility that the matter was still pending until a future discussion between the parties.

It is our opinion that Mr. Weeks' statements at the December 19, 1979, meeting with appellant were dispositive of respondent's position about appellant's interview and time for appeal commenced on that date.

CONCLUSIONS OF LAW

1. Appellant invoked the jurisdiction of this Commission pursuant to s. 230.45 Wis. Stats., which authorized the Personnel Commission to conduct hearings on appeals under s. 230.44 Wis. Stats.

2. The appellant has the burden of proving by the greater weight

of credible evidence that her appeal was filed with the Commission within the time limits set forth in s. 230.44(3), Wis. Stats.

3. The December 19, 1979 discussion between respondent and appellant constituted notification of respondent's decision about appellant's November 20, 1979 interview within the meaning of s.230.44(3), Wis. Stats.

4. The appellant has established by the greater weight of credible evidence that her appeal of December 26, 1979 to the Commission was received within the time limits provided in s.230.44(3), Wis. Stats.

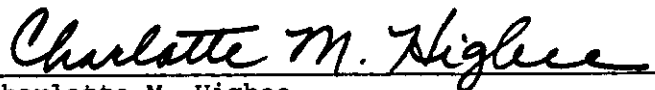
5. This matter qualifies for and is maintainable by appellant as an action in accordance with s.230.44(1)(d), Wis. Stats.

ORDER

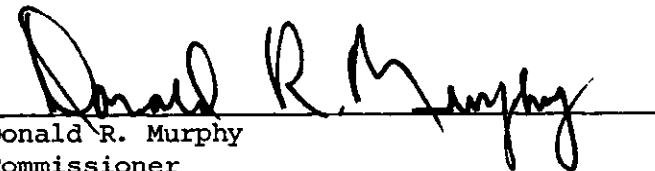
Respondent's objection to Commission's jurisdiction on grounds of timeliness of the appeal by appellant is overruled.

Dated May 15, 1980

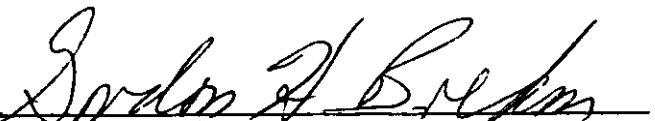
STATE PERSONNEL COMMISSION



Charlotte M. Higbee  
Commissioner



Donald R. Murphy  
Commissioner



Gordon H. Brehm  
Commissioner