

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *

RUTH A. GUNDLACH, *

Appellant, *

v. *

Administrator, DIVISION OF *

PERSONNEL, Secretary, DEPARTMENT *

OF TRANSPORTATION, *

Respondent. *

Case No. 79-PC-CS-296 *

* * * * *

INTERIM DECISION

AND ORDER

NATURE OF THE CASE

This matter is before the Commission on appellant's motion "for an Order establishing her rights to conduct investigations per the terms of Wis. Adm. Code §PC 1.10(4)," dated April 22, 1980. The Commission held a hearing on this motion on May 19, 1980, at which evidence was presented and arguments made. The parties also filed post-hearing briefs. Both the Division of Personnel and the Department of Transportation were represented at this hearing.

FINDINGS OF FACT

1. The appellant, a state employee in the classified service, has on file an appeal pursuant to §230.44(1)(a), Stats., of the reallocation of her position, which has been given the above number and caption.
2. The appellant is represented in this appeal by Dan Roberts, a staff employee of Council 24, American Federation of State County and Municipal Employees, Wisconsin State Employees Union.
3. The appellant is employed by the Department of Transportation in Madison.

4. On April 14, 1980, at 9:00 a.m., Mr. Roberts proceeded to the appellant's work site to attempt to interview the appellant, with respect to this appeal.

5. Mr. Roberts was informed by one of appellant's supervisors, John Buchen, that he would not be permitted to interview the appellant on work time without loss of pay.

6. As a result of the supervisors's position as set forth in the preceding paragraph, Mr. Roberts was unable to interview the appellant during her regular working hours without loss of salary.

CONCLUSIONS OF LAW

1. Section PC 1.10(4), Wis. Adm. Code, is not invalid for lack of a public hearing.
2. Section PC 1.10(4), Wis. Adm. Code, is not invalid as beyond the statutory authority of the Personnel Commission.
3. The respondent's actions on April 24, 1980, as set forth above, were in violation of §PC 1.10(4), Wis. Adm. Code.

OPINION

In the opinion of the Commission, the promulgation of §Pers. 1.10(4), Wis. Adm. Code, was within the Commission's authority and was within the rule-making requirements of Chapter 227. Respondent, Administrator, in his brief dated May 27, 1980, argues that the Commission failed to hold a public hearing as required by §227.02(1), Stats.:

"The Personnel Commission held two public hearings on its proposed rules. They were held at 9:00 a.m. on September 19, 1978, and at 10:30 a.m. on April 20, 1979. Section PC 1.04(4) did not appear in any draft of the Personnel Commission rules issued on or before April 20, 1979.

Subsequent to the second public hearing, the Personnel Commission amended its proposed draft to include §PC 1.10(4). There were no further public hearings."

This statement is accurate as far as it goes. However, §PC 1.10(4) was added to the rules as a result of a suggestion made at the second public hearing. The other sub-sections in §PC 1.10, which relate to the same general subject matter, had been in draft form and available to the public prior to the hearing. Under these circumstances the Commission was not required to have held a third public hearing prior to the promulgation of §PC 1.10(4).

The action taken by DOT on April 24, 1980, as set forth in the findings was in violation of §PC 1.10(4), Wis. Adm. Code.

ORDER

It is ordered that the appellant and her representative be permitted to conduct interviews in connection with their preparation of this case for prehearing and hearing, during regular working hours upon reasonable notice and for reasonable periods of time without loss of salary, in accordance with the provisions of §Pers. 1.10(4), Wis. Adm. Code.

Dated: June 2, 1980. STATE PERSONNEL COMMISSION

Charlotte M. Higbee
Charlotte M. Higbee, Commissioner

Gordon H. Brehm
Gordon H. Brehm, Commissioner

Abstention:

Donald R. Murphy
Donald R. Murphy, Commissioner