

STATE OF WISCONSIN

PERSONNEL COMMISSION

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GLADYS WALSH,

Appellant,

v.

President, UNIVERSITY OF
WISCONSIN,

Respondent.

Case No. 80-109-PC

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DECISION
AND
ORDERNATURE OF THE CASE

This is an appeal pursuant to Section 230.44(1)(c), Wis. Stats., of the termination of an employe with permanent status in class. Respondent has moved to dismiss this appeal on the grounds that the Personnel Commission lacks subject matter jurisdiction. The parties have submitted briefs on this motion. The findings which follow are based on facts which appear to be undisputed.

FINDINGS OF FACT

1. Appellant, Gladys Walsh, was employed as a Laboratory Technician I at the University of Wisconsin Dairy Plant and had permanent status as a state employe.

2. Appellant's position classification is covered by a collective bargaining agreement between the State of Wisconsin and AFSCME, Council 24, Wisconsin State Employees Union, AFL-CIO, although appellant was not a member of the union.

3. On April 10, 1980, Owen Fennema, chairman of the University of Wisconsin Food Science Department, sent a letter to appellant notifying her that she was terminated effective April 12, 1980. A copy of this letter

was also sent to William A. Abbott, counsel for appellant.

4. In the termination letter, Mr. Fennema informed appellant and her counsel that "your job classification is included in the technical bargaining unit covered by a collective bargaining agreement between the State of Wisconsin and AFSCME, Council 24, Wisconsin State Employees Union, AFL-CIO. Therefore, if you believe this action is unjust you may appeal in accord with contractual grievance procedure."

5. In a letter dated April 16, 1980, Attorney Abbott filed an appeal with the Personnel Commission on behalf of appellant protesting the termination.

OPINION

Respondent argues that the Personnel Commission is without jurisdiction of the employment termination appeals of permanent state employees who are covered by a collective bargaining agreement. Respondent cites the following Wisconsin Statutes in support of its argument:

Section 111.93(1) If no labor agreement exists between the state and a union representing a certified bargaining unit, employees in the unit shall retain the right of appeal under section 230.44. (Emphasis added.)

Section 230.44(1)(c) If an employee has permanent status in class, the employee may appeal a...discharge...to the Commission, if the appeal alleges that the decision was not based on just cause.

Section 230.34(1)(a) An employee with permanent status in class may be...discharged,...only for just cause. This paragraph shall apply to all employees...except that for employees in a certified bargaining unit covered by a collective bargaining agreement, the determination of just cause and all aspects of the appeal procedure shall be governed by the provisions of the negotiated agreement. (Emphasis added.)

Section 111.93(3) If a labor agreement exists between the state and a union representing a certified or recognized bargaining unit, the provisions of such agreement shall supersede such provisions of civil service and other applicable statutes related to wages, hours and conditions of employment whether or not the matters contained in such statutes are set forth in such labor agreement.
(Emphasis added.)

Section 230.34(1)(a) clearly limits the jurisdiction of the Personnel Commission to hear appeals of terminated permanent state employees to those employees who are not employees "in a certified bargaining unit covered by a collective bargaining agreement...." This conclusion is reinforced by Section 111.93(3) which states that where a labor contract exists covering a recognized bargaining unit, "the provisions of such agreement shall supersede such provisions of civil service and other applicable statutes related to wages, hours and conditions of employment...."

It is undisputed that appellant was a member of such a bargaining unit. It is also undisputed that she was aware that her position was covered by the union agreement. Finally, it is undisputed that she was properly informed about her appeal rights under the union contract.

Appellant argues that she should not be bound by the collective bargaining agreement in appealing her termination because Section 111.82, Wis. Stats., gives her the right to refrain from any or all union activities.

Section 111.82 states:

"State employees shall have the right of self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing under this subchapter, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection. Such employees shall also have the right to refrain from any or all of such activities." (Emphasis added.)

Appellant contends, "Unless this section is only a dead letter conferring on the appellant the right not to participate, but not the right to retain remedies otherwise usurped by agreement of the labor union, the appellant's right to refrain from the union activities must include the right to appeal her discharge to the Personnel Commission."

Appellant is misinterpreting the meaning of Section 111.82. This section permits state employees from joining and supporting labor organizations, but it does not exempt such employees from being covered by contracts negotiated by the labor organization which has established bargaining rights covering their employment. Just as these employees must be extended all the benefits negotiated by the labor organization, whether they are members or not, they must also be bound by the rules and procedures contained in the labor agreement. Therefore, the exclusive appeal procedure available to Ms. Walsh was provided by the union contract covering her employment.

Appellant also argues that the Personnel Commission should be estopped from dismissing this appeal because of alleged erroneous information provided to her attorney regarding filing her appeal. Attorney William A. Abbott states in an affidavit that he called the State Personnel Board on April 15, 1980 and was told by an unidentified employee that Ms. Walsh's appeal could be filed with the Board or through the union grievance procedure. Mr. Abbott then filed an appeal on behalf of Ms. Walsh with the Personnel Commission.

First of all, there is some doubt as to whether Attorney Abbott called the Personnel Commission or the Personnel Board. He states in his affidavit that he called the Personnel Board, a separate state agency from the Personnel Commission. The Personnel Board formerly heard appeals~~s~~ from personnel actions by state employees prior to the establishment of the Personnel Commission in 1978. His appeal filed on behalf of Ms. Walsh was addressed to the Personnel Board but sent to the mailing address of the Personnel Commission.

In any event, estoppel has been held to be effective only as between the parties to a controversy and must involve reliance by one party on the opposing party, Nolden v. Mutual Benefit Life Insurance Co., 80 Wis. 2nd 353 (1977). The Personnel Commission has also ruled that estoppel does not lie against the agency where the appellant has been misinformed of his appeal rights by some other person. See, e.g., Bong and Seeman v. DILHR & DP, 79-167-PC (11-8-79).

Even assuming, arguendo, that appellant was misinformed regarding her appeal rights by means of the telephone call, she was represented by counsel before and during the time of the filing of her appeal. Respondent did inform appellant and her counsel the proper way to file her appeal and her counsel had the opportunity to research the applicable law. Therefore, good faith reliance, another necessary element of estoppel, is not present in these circumstances.

CONCLUSION OF LAW

1. The Personnel Commission is without jurisdiction to hear employment termination appeals of permanent state employees who are covered by a collective bargaining agreement.

ORDER

The appeal of Ms. Walsh is hereby dismissed on motion of the respondent because the Personnel Commission lacks subject matter jurisdiction.

Dated July 28, 1980 STATE PERSONNEL COMMISSION

Charlotte M. Higbee
Charlotte M. Higbee
Chairperson

Donald R. Murphy
Donald R. Murphy
Commissioner

Gordon H. Brehm
Gordon H. Brehm
Commissioner