STATE OF WISCONSIN PERSONNEL COMMISSION * * * * * * * * * * * * * * * * * * JULIE KAWCZYNSKI. * * * Appellant, * `v. ÷ DECISION * AND Secretary, DEPARTMENT OF * ORDER TRANSPORTATION. * * Respondent. * * Case No. 80-181-PC * * * * * * * * * * * * * * * * *

This matter is before the Commission on the question of whether it has the authority to hear this appeal.

This is an appeal of the refusal fo the respondent to hire appellant as a limited term employe on the grounds that her father was a state employe. The parties have filed written arguments on the issue of the Commission's jurisdiction.

It must be understood that the Commission is created by statute and that it can only hear such cases as the legislature, by statute, has given it the authority to hear. The Commission has been given specific authority to hear specific types of cases. It does not have the authority to hear other kinds of cases. To cite one example, \$230.44(1)(c), Wis. Stats., gives the Commission the authority to hear appeals of certain disciplinary actions by employes with permanent status in the calssified service. However, the Commission has no authority to hear appeals from employes <u>not</u> in the classified civil service. See, e.g., <u>Rodell v. UW</u>, Wis. Pers. Comm. 78-233-PC (2/28/79).

The Commission has been unable to find any statutory provision which would give it the authority to hear this appeal. Pursuant to §230.44(1)(d), the Commission can hear an appeal of: "A personnel action <u>after certification</u> which is related to the hiring process in the classified service and which is alleged to be illegal or an abuse of discretion...." (emphasis added)

, Certification is a process by which appointing authorities are informed of the names of the persons at the head of the register following a competitive civil service examination for a vacancy in the classified service. See §230.25. Limited-term appointments do not require formal civil service examination and certification procedures. See, e.g., §Pers. 8.02(3), Wis. Adm. Code. Therefore, the decision on hiring made here was not a personnel action <u>after certification</u>, and is not appealable pursuant to §230.44(1)(d).

Pursuant to §230.45(1)(b), the Commission is to "receive and process complaints of discrimination under §111.33(2)." Ms. Kawczynski argues that the resondent's decision not to hire her because of her father's employment constitutes discrimination on the basis of "ancestry," see §111.32(5)(a), Wis. Stats. In the opinion of the Commission, the use of the term "ancestry" does not include alleged discrimination on the basis of a specific family relationship such as is involved here. See <u>Whateley</u> <u>v. Leonia Board of Education</u>, 141 N.J. Super. 476, 358 A. 2d 826, 827-828 (1976):

"The obvious intent in doing so was not the prevention of discrimination based upon specific family relationships between individuals such as here, but to prohibit discrimination because of racial, religious, ethnic, or national ancestry shared by numerically significant segments of the population. This conclusion is buttressed by application of the doctrine of noscitur a sociis, for the coupling of words in a statute denotes an intention that they be understood in the same general sense....[citations Kawczynski v. DOT Case No. 80-181-PC Page 3

> omitted]. The words associated with "ancestry" in both the Constitution and the statute---"race, creed, color," etc.-attribute to it a meaning beyond that derived from the laws of descent and distribution."

The New Jersey law is similar to Wisconsin's, and this reasoning is persuasive.

Ms. Kawczynski has inquired as to "who does have jurisdiction" over this matter if the Commission does not. Letter to Commission dated October 24, 1980.

It seems clear from a reading of subchapter II of Chapter 230, and particularly §§230.44 and 230.45, that the legislature has not provided a <u>right</u> to administrative review for all personnel transactions, including this one. The State Personnel Board, which is a separate agency from this Commission, does have relatively broad discretionary authority to investigate:

"The Board <u>may</u> make investigations and hold hearings on its own motion or at the request of interested persons...concerning <u>all matters</u> touching the enforcement and effect of this subchapter [civil service] and rules prescribed thereunder." §230.07(4), Wis. Stats. (emphasis supplied)

Therefore, Ms. Kawczynski could request the Personnel Board to investigate this matter pursuant to \$230.07(4), Wis. Stats., but the determination whether to investigate would be discretionary with that Board. Kawczynski v. DOT Case No. 80-181-PC Page 4

ORDER

This matter is dismissed for lack of subject matter jurisdiction.

Dated ______, 1980

STATE PERSONNEL COMMISSION

glue Charlotte M. Higbee

Chairperson

Donald R. Murphy

Donald R. Murph Commissioner

An Gordon H. Bréhm

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AJT:mek

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