

"A personnel action after certification 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 after certification, 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 respondent'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 Whateley v. Leonia Board of Education, 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

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 right 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 may make investigations and hold hearings on its own motion or at the request of interested persons...concerning all matters 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.

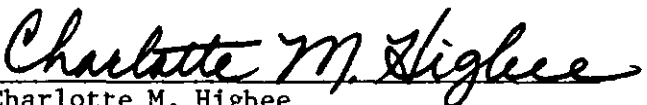
Kawczynski v. DOT
Case No. 80-181-PC
Page 4

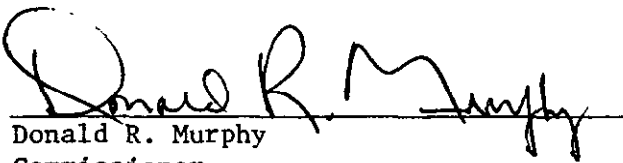
ORDER

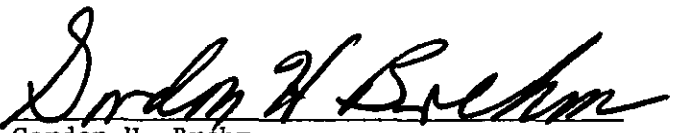
This matter is dismissed for lack of subject matter jurisdiction.

Dated Nov. 4, 1980

STATE PERSONNEL COMMISSION


Charlotte M. Higbee
Chairperson


Donald R. Murphy
Commissioner


Gordon H. Bréhm
Commissioner

AJT:mek

Parties:

Julie Kawczynski
7232 Devonshire Ave.
Greendale, WI 53129

Lowell Jackson
Secretary, DOT
P.O. Box 7910
Madison, WI 53707