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CYNTHIA MANLOVE,
Appellant,

v.
Secretary, DEPARTMENT OF INDUSTRY,
LABOR, AND HUMAN RELATIONS,
Respondent.

DECISION
AND
ORDER

Case No. 80-355-PC

* * * * *

NATURE OF THE CASE

This matter is before the Commission on respondent's motion to dismiss for lack of subject-matter jurisdiction. The parties have submitted briefs, and the essential facts relating to subject-matter jurisdiction do not appear to be in dispute.

FINDINGS OF FACT

1. This appeal, filed November 6, 1980, and signed by Ms. Manlove, states in pertinent part as follows:

"On 10/17/80, the Fox Valley Job Service District Director, Larry P. Smits, determined that one of three Job Service Assistant 3 Registration Review positions will be filled by a Project Limited Term employee, for a possible one-year period. The employees of the Fox Valley Job Service feel that the Registration Review duties are a regular and continuing function of Job Service, and that the workload of the Fox Valley office will demand a minimum of three positions on a permanent basis. As a result of their decision to utilize a Project LTE, management is denying a well deserved promotional opportunity to the permanent staff of Job Service. Also, the decision is in violation of Wisconsin State Statutes, Chapter 230.27, 'Project Appointments'. As the grievance representative for the Fox Valley Job Service, on behalf of the employees, I would like to appeal this decision to the Personnel Commission."

2. In late August and early September, 1980, the Department of Administration (DOA) approved the creation of 95 project positions within DILHR, including four (4) that were allocated to the Fox Valley District Job Service office.

3. Jane Hartzheim was appointed to one of the aforesaid four (4) positions effective September 21, 1980, on a project appointment basis without formal competition.
4. Ms. Hartzheim was assigned to the Fox Valley adjudication unit as an adjudication aide. Her primary job function involved conducting eligibility review plan (ERP) interviews with individual claimants.
5. In late September, 1980, the Fox Valley office was directed by the Job Service Administrator's office to implement a new system for delivery of services, including new procedures for "registration review." In order to implement the registration review process, the Fox Valley office management was authorized to use two existing vacant permanent positions. In addition, management assigned Ms. Hartzheim's project position to the newly structured registration review program. Both the two vacant permanent positions and Ms. Hartzheim's project position are identified at the Job Service Assistant 3 level, and are now located in the office's employment assistance unit. This change in office organization was implemented on or about October 17, 1980.
6. One of the two permanent Job Service Assistant 3 registration review positions was filled effective November 16, 1980, by the voluntary transfer of Joyce Gehring, pursuant to the posting provisions of the union contract.
7. The second permanent Job Service Assistant 3 registration review position was filled on or about December 14, 1980, by the competitive promotional appointment of Rosaline Jerikowic. Mary Jo Gaffney was one of two additional names certified for that vacancy after two higher ranked persons stated they were not interested.

8. Ms. Hartzheim's current duties are identical to those set forth on the position descriptions for Ms. Jerikowic and Ms. Gehring.

CONCLUSION OF LAW

The Commission lacks jurisdiction over the subject matter of this appeal.

OPINION

The respondent, through her representative, argues in her brief on jurisdiction that "the decision to create a project position is appealable to the Commission," as a decision of the administrator or his delegate, pursuant to §230.44(1)(b) and (d), Wisconsin Stats.

The respondent has not cited any authority for the proposition that the creation of a project position is a decision of the administrator, and the Commission can find none. Section 230.27, the section in the Civil Service code dealing with "Project employment and appointments," does not deal with the creation of project positions. Section 16.505 Stats. deals with "Position authorization" and provides as relevant:

"(1) No position, as defined in §230.03(11), regardless of funding source or type, may be created unless authorized by one of the following:

- (a) The legislature by law or in budget determinations.
- (b) The Joint Committee on Finance acting under §13.101 or as otherwise provided by law.
- (c) The Governor acting under §16.54 or creating positions under §20.001(2)(b) or (c)."

This cannot be considered an appeal pursuant to §230.44(1)(d) Stats., ("...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...") since there has been no indication that there ever was a "certification" for the position in question, which was filled without competition.

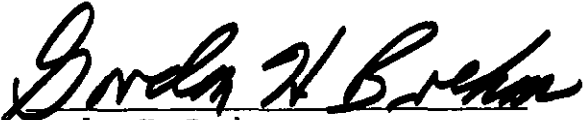
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ORDER


This appeal is dismissed for lack of subject-matter jurisdiction.

Dated: April 23, 1981.

STATE PERSONNEL COMMISSION



Gordon H. Brehm
Commissioner



Donald R. Murphy
Commissioner

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AJT/lkr