STATE OF WISCONSIN

PERSONNEL COMMISSION

PETITION FOR

REHEARING

DECISION ON

In a decision and order dated August 19, 1980, the Commission dismissed this appeal for lack of subject matter jurisdiction. The Commission had analyzed the appeal to determine whether the allegations, if proven, might constitute violations of the civil service statutes or rules, and determined that the answer was no.

In a letter dated September 1, 1980, and filed September 3, 1980, the appellant requested a rehearing on the basis of errors of fact and law. He argues that certain transactions (which arguably were included in or covered by his original appeal), were in violation of various statutes. He also argues, in essence, that as to certain transactions the Commission would have jurisdiction as direct appeals. For example, he states that he was forced to resign under duress and that this is appealable pursuant to \$230.44(1)(c), Wis. Stats., as constructive disciplinary action.

Furthermore, as against the respondent's contention that he failed to follow correct grievance procedures, he alleges that he in fact pursued the grievance through the three steps of the grievance procedure.

Given that pleadings in administrative proceedings such as this are to be construed liberally, that appellants normally are permitted a good

Earl Smith v. DOA Case No. 80-42-PC Page 2

deal of leeway in amending appeals, that some of the underlying facts relating to jurisdiction appear to be in dispute, and that the appellant is unrepresented, it is the opinion of the Commission that the petition for rehearing should be granted and a hearing held at which the facts relating to jurisdiction can be established. It should be emphasized that this hearing is not to be a hearing on the merits of the appellant's complaints against the respondent, but rather a hearing to establish the nature and dates of the personnel transactions that are alleged in the appellant's September 1, 1980, letter, including the question of whether the grievance procedures were followed. It also should be emphasized that this Commission only has jurisdiction over those matters set forth in §§230.44 and 230.45, Stats., and then only when a timely appeal is filed.

## ORDER

The appellant's request for rehearing dated September 1, 1980, is granted, and the decision and order dated August 19, 1980, is vacated pending an evidentiary hearing on the question of whether the Commission has jurisdiction over this appeal.

Dated <u>Sept. 26</u>, 1980

STATE PERSONNEL COMMISSION

Charlotte M. Higbee

Chairperson

Opposed:

Donald R. Murphy

Commissioner

Gordon H. Brehm

Commissioner

AJT:mew 9/25/80

STATE OF WISCONSIN

PERSONNEL COMMISSION

DECISION

AND

ORDER

\* Appellant, \*

\*

V. \*

\*

Socretary DEDADTMENT OF \*

Secretary, DEPARTMENT OF ADMINISTRATION,

Respondent.

Case No. 80-42-PC

\* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \*

## NATURE OF THE CASE

This matter is before the Commission on respondent's objection to subject-matter jurisdiction.

## OPINION

The appellant filed an appeal dated Feburary 6, 1980, with the Commission on February 6, 1980. It stated, in part, that the appellant was "appealing [his] grievance with the Department of Administration..."

Attached to the appeal letter was a copy of a memo also dated February 6, 1980, to Secretary Linder, subject: Employe Grievance.

In this memo, the appellant indicated that in 1979 the ?Bureau of Program Management was reorganized and he was asked to accept a position as acting supervisor of the Program Development Unit, with the understanding that there would be prompt recruitment and appointment for this position. It was further indicated that appellant was notified on January 10, 1980, that the position was to be abolished effective January 14, 1980. The appellant then states:

Smith v. DOA Case No. 80-42-PC Page 2

"I believe the failure to meet the conditions agreed upon in January of 1979 is an abuse of discretionary management authority. This abuse has resulted in my loss of promotional opportunity. It has also resulted in denying full payment for the level of service I provided the department in 1979."

The appellant further complained of an alleged illegal reorganization conducted by the Bureau of Program Management in January of 1979 which allegedly caused his disqualification for reallocation consideration in connection with a statewide personnel survey on data processing positions:

I believe conducting an illegal reorganization within the Department of Administration is an abuse of discretionary management authority. This abuse has resulted in my loss of a promotional opportunity through reallocation.

The memo further stated, in part, as follows:

Mr. Christenson also told me that the position description agreed to and signed by both Gail Swanson and myself was invalid. In an effort to correct this situation I met with Gail Swanson, and personnel officers Tom Herman and Sue Steinmetz in December of 1979. At that meeting a planned reorganization of the Bureau of Information Development was explained to me. The proposed reorganization eliminated my acting position and created a special projects position at one step above my current level. I was told at this meeting there would be an immediate recruitment for the special projects position as part of reorganization implementation and that I would have an opportunity to compete for that vacancy. On January 10, 1980, Gail Swanson informed me that the special projects position would be filled on an internal transfer and there would be no advancement opportunities available. I believe the failure to carry out the management commitments made to me is an abuse of discretionary management authority. This abuse has resulted in another loss of promotional opportunity.

The respondentargues that the letter of February 6, 1980, to

Secretary Linder "was not a grievance per se, but rather an appeal of

unfair treatment. Mr. Smith ... did not follow the procedures for

filing a non-contractual grievance." Thus, his letter cannot be considered

a grievance, letter from Ruth Hable dated July 7, 1980.

Smith v. DOA Case No. 80-42-PC Page 3

Laying to one side the question of whether the appellant followed the correct procedure with respect to pursuing a non-contractual grievance, the more overriding question is whether any of the matters set forth in the appellant's letter of February 6, 1980, could be appealed to the Commission, at the fourth step, in any event.

In the recent Circuit Court decision of <u>DOT v. Wisconsin Personnel</u> <u>Commission (Kennel, Brauer, and Murphy)</u>, No. 79-CV1312 (7/21/80), the Court held that the Commission could only hear such appeals when they involved actual violations of civil service statutes or administrative code rules.

Therefore, to determine whether there possibly might be jurisdiction over this appeal as a fourth step grievance appeal, again laying to one side the question of whether the appellant followed the correct procedures, the Commission must analyze the appellant's February 6th letter to Secretary Lindner to determine if the allegations, if proven, might constitute an actual violation of the civil service statutes or rules.

The second paragraph on page 1 of the February 6th letter refers to a decision to abolish and not to recruit for, a position. It is alleged that this was "an abuse of discretionary management authority."

Such an allegation is an insufficient basis for Commission jurisdiction pursuant to the Circuit Court decision cited above. Furthermore, the Commission cannot ascertain any civil service statute or rule that would be violated if an "abuse of discretionary management authority." The closest possibly relevant statute is s.230.44(1)(d), which provides that:

"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 may be appealed to the Commission." Smith v. DOA Case No. 80-42-PC Page 4

However, here there was no certification, there was no personnel action after certification, and this subsection is inapplicable.

The same comments apply to the decision to fill the special projects position on a transfer, rather than competitive basis, as set forth in paragraph 2 of page 2 of the February 6th letter.

With respect to the alleged illegal reorganization and alleged resulting denial of reallocation opportunity as set forth in the third paragraph on page 1 and the first paragraph of page 2, while there are certain requirements for reorganizations, e.g., see s.15.02(4), stats., there are no provisions in the civil service statutes (Subchapter II, Chapter 230) or administrative code rules (chapter PERS, Wis. Adm. Code) governing reorganizations. Therefore, the Commission could not have purisdiction over this aspect of this appeal.

## ORDER

	This appe	eal is dismi	ssed for	lack of jurisdiction, and the hearing
that	had been	scheduled p	ending a	ruling on jurisdiction is cancelled.
Date	d		_,1980	STATE PERSONNEL COMMISSION
				harlotte M. Higbee hairperson
				onald R. Murphy ommissioner
			G	ordon H. Brehm

Commissioner

AJT:arl