

STATE OF WISCONSIN

PERSONNEL COMMISSION

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STEPHANIE THORN,  
                  Appellant,

v.

Secretary, DEPARTMENT OF  
HEALTH AND SOCIAL SERVICES,  
                  Respondent.

Case No. 81-459-PC

\* \* \* \* \*

DECISION  
AND  
ORDER

The respondent moved for the dismissal of the above matter alleging that the Commission lacked subject matter jurisdiction to hear the appeal. Both parties have submitted briefs. However, neither party requested a jurisdictional hearing.

The appeal alleged various improper actions by the appellant's appointing authority. Appellant alleged that she 1) has been excluded from the DHSS Performance Planning and Development Program (PPD) which required an annual PPD session between the supervisor and the employee; 2) was not provided with a position description (PD) during a 16 month period contrary to §230.09, Stats.; 3) has not received an employe performance evaluation since March, 1980 contrary to §230.37, Stats.; and 4) was denied an "automatic" wage step increase as of July 1, 1981.

The Commission's jurisdiction over appeals of personnel decisions is founded on the provisions of §230.44(1), Stats. That section identifies four discrete types of appealable actions or decisions. One of the jurisdictional provisions, relating to post-certification personnel actions related to the hiring process, is unrelated to the appellant's allegations. The other three subsections provide as follows:

(a) Decision of administrator. Appeal of a personnel decision of the administrator, including but not limited to a refusal to examine an applicant or certify an eligible under §230.17, orders by the administrator under §230.05(4), actions and decisions of the administrator under §230.09 and decisions of the administrator concerning employing units under §230.30, shall be to the commission.

(b) Action delegated by administrator. Appeal of an action delegated by the administrator to an appointing authority under §230.05(2) shall be to the commission.

(c) Demotion, layoff, suspension or discharge. If an employe has permanent status in class, the employe may appeal a demotion, layoff, suspension, discharge or reduction in base pay to the commission, if the appeal alleges that the decision was not based on just cause.

Pursuant to §230.05(2), Stats., delegation of the administrator's functions may include any of the administrator's functions set forth in Subch. II, Ch. 230, Stats., except for the "final responsibility for the monitoring and oversight of the civil service system."

Performance Planning and Development Program

The appellant suggests that §Pers 20.08, Wis. Adm. Code, establishes a requirement that PPD sessions are required:

Pers 20.08 Employe performance evaluation and development. In accordance with standards and procedures established by the director as provided under §16.32(1), Stats., each appointing authority subject to the approval of the director shall establish an employe performance evaluation and development program directed at motivating and assisting state employes to furnish state services to the public as fairly, efficiently and effectively as possible. The program shall provide for a written performance evaluation to be developed and discussed by the appointing authority for and with each classified employe in a permanent position at least once each year.

This provision merely requires the establishment of a program. Carrying out the established program is the responsibility of the appointing authority. In addition, authority over establishing PPD programs was transferred by Ch. 196, Laws of 1977, from the "director" to the Secretary of the Department of Employment Relations rather than to the Administrator.

(See §230.04(8), Stats.). The Administrator has no authority over PPD's that can be delegated to the appointing authority. As a consequence, disputes as to PPD's are not appealable under §230.44(1)(b), Stats.

#### Position Description

Appellant also argues that position descriptions are required to be developed under §230.09(1), Stats., which provides:

230.09 Classification. (1) The administrator shall ascertain and record the duties, responsibilities and authorities of, and establish grade levels and classifications for, all positions in the classified service subject to the approval of the board. He or she shall use job evaluation methods which in his or her judgment are appropriate to the class or occupational groups. Each classification so established shall include all positions which are comparable with respect to authority, responsibility and nature of work required. Each classification shall be established to include as many positions as are reasonable and practicable.

The above provision requires the administrator to set up a classification system that covers all positions in the state service. There is no requirement within §230.09(1), Stats., requiring the administrator to draft a position description for each employee, nor does any other statutory provision establish such a requirement. Therefore, the Commission lacks jurisdiction over this aspect of the appeal.

#### Employe Performance Evaluation

The appellant also suggests that the failure to evaluate the appellant's work is also an appealable decision. The Commission has previously ruled that "there are no statutory provisions which give the Commission the authority to hear a direct appeal of a performance evaluation." Welniak v. UW, Case No. 81-126-PC (6-3-81). Again, there is no statutory grant to the Administrator authority over evaluations. As a consequence, there can be no delegation of authority under §230.44(1)(b), Stats.

Denial of Step Increase

Appellant's final contention is that she was denied an "otherwise automatic step wage increase given all employes" that "can be blocked only by active intervention of some supervisory authority." By the very nature of her argument, the appellant indicates that the denial of the wage increase is a decision made by supervisors rather than a decision within the administrator's authority but delegated to the various appointing authority. Furthermore, §230.06(1)(b), Stats., specifically grants power to the appointing authority not the administrator, to "fix [employes'] compensation".

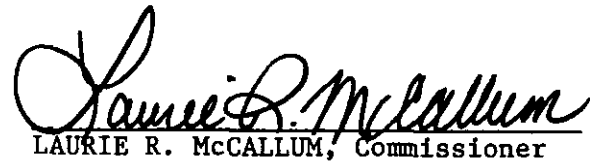
The denial of a wage increase is also not appealable under §230.44 (1)(c), Stats., which permits appeals of demotions and reductions in base pay. Nothing within the appellant's argument suggest that she was moved from "one class to a position in a lower class" which is the definition of "demotion" established in §Pers 17.01, Wis. Adm. Code. Similarly, the appellant's statements indicate that her pay was not increased. There is no suggestion that her base pay was reduced as required for establishing jurisdiction under §230.44(1)(c), Stats., as a reduction in base pay.

ORDER

This appeal is dismissed due to lack of subject matter jurisdiction. Dismissal does not affect case number 81-PC-ER-118 which is pending before the Commission.

Dated: June 9, 1983 STATE PERSONNEL COMMISSION

  
DONALD R. MURPHY, Chairperson

  
LAURIE R. McCALLUM, Commissioner

KMS:lmr

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