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DONNA POGLIANO,
 Appellant,
 v.
 Secretary, DEPARTMENT OF
 REVENUE,
 Respondent.

Case No. 81-466-PC

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DECISION
 AND
 ORDER

NATURE OF THE CASE

This is an appeal of the denial at the third step of a non-contractual grievance. The respondent has moved to dismiss on the grounds of lack of subject matter jurisdiction and the parties have filed written arguments with respect thereto. The essential facts relating to subject matter jurisdiction appear to be undisputed and are set forth as follows.

FINDINGS OF FACT

1. At all relevant times the appellant has been employed by respondent in the classified civil service as a Tax Representative 2 in the Milwaukee office.
2. The subject matter of the appellant's non-contractual grievance involves alleged unprofessional conduct and lack of decorum by court commissioners and departmental attorneys at "supplemental hearings," which we held to discover the assets of delinquent tax payers for purposes of collection.
3. The relief requested by the appellant, which was not granted by the respondent, involves the institution of a formal requirement that such hearings be monitored by use of a tape recorder or the presence of a supervisor.

CONCLUSIONS OF LAW

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

OPINION

Section 230.45(c), stats., provides that the Commission shall "serve as final step arbiter in a state employe grievance procedure relating to conditions of employment, subject to rules of the secretary providing the minimum requirements and scope of such grievance process." In the absence of the promulgation of such rules by the secretary of DER, the transitional provisions of Chapter 196, Laws of 1977, sec. 129(4q), provide that pre-existing rules remain in effect. Therefore, in order to determine what non-contractual grievances can be appealed to the Commission, it must look to §Pers. 25.01, Wis. Adm. Code, and the Administrative Practices Manual issued pursuant to §Pers. 25.01. The APM (Subject: Non-contractual Employee Grievance Procedures, effective 8/24/66, revised 10/1/74) provides limits grievances which can be appealed to the fourth step to those which allege that the employing agency has violated, through incorrect interpretation or unfair application, a personnel rule or civil service statute--i.e., Subchapter II of Chapter 230, or Chapter PERS, Wis. Adm. Code.

The subject matter of Ms. Pogliano's grievance does not involve a personnel matter as such, but rather a matter relating to the management of the respondent agency, having to do with how the "supplemental hearings" should be conducted. The Commission cannot perceive how such a subject matter could involve even an arguable violation of the civil service law.

In her written arguments, the appellant suggests that the respondent's actions which precipitated the grievance violated conditions of employment created by §§230.01(1) and (2), stats:

- ' (1) It is the purpose of this chapter to provide state agencies and institutions of higher education with competent personnel who will furnish state services to citizens as fairly, efficiently and effective as possible.
- (2) ...It is the policy of the state to ensure its employes opportunities for satisfying careers and fair treatment based on the value of each employe's services.

However, these provisions are not part of Subchapter II of Chapter 230 ("CIVIL SERVICE"). Furthermore, it is difficult to conceive how an agency can be said to have "violated," as set forth in the APM, such general provisions, since it is neither interpreting or applying personnel statutes in its determinations as to the conduct of supplemental hearings.

The appellant also argues that the respondent violated §230.06(1)(b), stats., by failing to discipline its agents and employes who took part in the allegedly abusive activities. However, that section merely empowers the appointing authority to discipline employes and as such does not provide a substantive standard of conduct which the respondent arguably may be said to have violated.

Appellant also cites §Pers. 26.03(1)(b), Wis. Adm. Code, regarding the Commission's authority to hear appeals of decisions alleged to be illegal or an abuse of discretion. However, this rule was repealed effective March 1, 1981, which is consistent with the repeal of the statutory provision, §16.03(4), stats.(1975), which provided the basis for the rule.

She further argues that this grievance involves "a function of the administrator (namely responsibility for overseeing the discipline of

employees..." However, the administrator of the division of personnel's only function in this area is to "establish guidelines for uniform application of this [disciplinary] authority among the various agencies." §230.(1)(c), stats., and the Commission cannot perceive any connection between this provision and the subject matter of this appeal.

In the final analysis, Ms. Pogliano's grievance concerns a question of agency program administration--how to administer the conduct of supplemental hearings. While, like many program decisions, it impacts on employees, it does not involve a personnel transaction as such, and the law does not provide that the Personnel Commission can review such decisions.

ORDER

This appeal is dismissed for lack of subject matter jurisdiction.

Dated: June 10, 1982 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson

AJT:jmf


LAURIE R. McCALLUM, Commissioner


JAMES W. PHILLIPS, Commissioner

Parties

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