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 FIELDING LOURY HUESMANN III,
 Appellant,
 v.
 Director, STATE HISTORICAL
 SOCIETY,
 Respondent.
 Case No. 82-67-PC
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INTERIM
 DECISION
 AND
 ORDER

This matter is before the Commission as an appeal from a discharge. At the prehearing conference, the respondent objected to the authority of the Commission to hear the matter, arguing that the letter of appeal failed to state that the decision was not based on just cause. The appellant also moved to limit the issues at hearing to events occurring subsequent to appellant's reinstatement pursuant to an order of the Commission issued in the case of Huesmann v. State Historical Society, Case No. 81-348-PC (1/8/82). Both parties have filed briefs. Because neither party has requested an evidentiary hearing on their respective motions, they have waived any right they may have to such a hearing. The following facts are based on documents that are in the record.

FINDINGS OF FACT

1. Pursuant to a letter dated August 12, 1981, appellant was discharged from his position with respondent society as Superintendent of Building and Grounds, Old World Wisconsin.
2. That discharge action was appealed to the Commission as Case No. 81-348-PC and appellant filed a motion for reinstatement due to alleged errors and deficiencies in the letter of termination.
3. Pursuant to the Commission's Order dated January 8, 1982, appellant's motion was granted, the termination letter was voided and the respondent was directed to reinstate the appellant.

4. The appellant was reinstated.

5. Pursuant to a letter dated March 12, 1982, the appellant was again discharged from his position as Superintendent of Buildings and Grounds, effective March 15, 1982. (Commission's Exhibit #1)

6. By letter filed with the Commission on March 16, 1982, Attorney

P. Scott Hassett of the law firm of Lawton & Cates stated:

Please be advised that this firm represents Mr. Filing Loury Huesmann III. Under cover of this letter we hereby appeal Mr. Huesmann's discharge effective March 15, 1982, as Superintendent of Buildings and Grounds I at Old World Wisconsin. The first page of Mr. Huesmann's discharge letter of March 12, 1982, is attached hereto.

6. By letter filed with the Commission on May 10, 1982, Mr. Hassett sought to amend his letter of appeal as follows: "By way of amendment I wish to add that the discharge was not based on just cause."

CONCLUSIONS OF LAW

1. The appellant should be permitted to amend his original appeal letter.
2. The appellant's letter of amendment relates back to the filing of the original appeal and cures any jurisdictional defect which may have been present.
3. The doctrine of double jeopardy is inapplicable to the instant appeal.

OPINION

A. Allegation of Lack of Just Cause

Respondent's jurisdictional objection raises an issue substantially identical to one treated by the Commission in Oakley v. Bartell, Case No. 78-66-PC, (10/10/78). There, the appellant has filed an appeal from his discharge without alleging lack of just cause. Pursuant to s.230.44(1)(c), Wis. Stats., an "employee may appeal a .. discharge ... to the commission if the appeal alleges that the decision was not based on just cause." Nearly five months later the appellant requested to amend his prior statement and allege lack of just cause. In permitting the amendment the

Commission stated, in part:

In the Commission's view, parties to personnel appeals should be permitted a good deal of liberality in amending pleadings. It is a general rule of administrative law that pleadings are liberally construed and are not required to meet the standards applicable to pleadings in a court proceeding. Amendments to pleadings are committed to the sound discretion of the agency.

In judicial proceedings in this state the new code of civil procedure permits great liberality in amending pleadings. Pleadings may be amended without leave of court at any time "prior to the entry of the scheduling order," s.802.09(1), Stats., and the amendment relates back to the date of the filing of the original pleading "if the claim asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading, s.802.09(3), Stats. While these provisions do not apply to administrative proceedings, this Commission does not believe any stricter rule is called for in the regulation of proceedings before it. (Citations omitted).

There have been some minor changes in the current language of s.802.09(1), Wis. Stats., so that amendments are automatically permitted "at any time within 6 months after the summons and complaint are filed or within the time set in a scheduling order under s.802.10."

The respondent has offered no reasons why the Commission's ruling in Oakley should be inapplicable in the instant appeal. Respondent's general reliance on the rules of statutory construction fails to recognize the effect of that liberal pleading has the requirements of s.230.44(1)(c), Wis. Stats.

By filing an amendment adding the just cause allegation just two months after the original letter of appeal was filed, the appellant was able to cure any jurisdictional defect which may otherwise have been present.

B. Limiting the Issues

The second issue raised during the prehearing conference in this matter is whether the Commission should issue an order limiting issues at the hearing to allegations of misconduct occurring after appellant was reinstated in January, 1982. The appellant argues that the double jeopardy rule as applied by arbitrators

prevents the imposition of more than one penalty for a single offense and that fundamental fairness dictates limitation of the issues.

The Commission predecessor, the Personnel Board, decided a similar question in McManus v. Weaver, Case No. 74-32 (7/30/75). In McManus, the appellant had had been discharged by a letter that was not signed by the appointing authority or his registered delegatee. The Board found the discharge to be ineffective and void and ordered appellant reinstated. After apparently being reinstated, appellant was discharged again, this time pursuant to a properly signed letter of termination. The employe filed a new appeal with the Board and argued that the concept of double jeopardy should be applied to bar the reimposition of the discharge. The Board's decision includes an extensive analysis of the double jeopardy question. In ruling that the appeal did not fall within the scope of the double jeopardy doctrine, the Board concluded that Wisconsin only applies the doctrine in criminal cases (the "one narrow legislative extension" being inapplicable) and that even those standards developed for applying the doctrine in arbitration proceedings were not met where the first discharge letter was ruled to be void.

The same reasoning is dispositive of the instant appeal. The appellant has offered no case law or statutory language that would support the extension of the doctrine in the Commission's scope of authority. The appellant has also relied on arbitration cases with facts that are distinguishable from the facts of this case. In both Wolverine World Wide, Inc., 66 L.A. 796 (1976) and Abex Corporation, 67 L.A. 1313 (1977), the employe had been disciplined once for certain conduct. In contrast, Mr. Huesmann's initial discharge letter was voided by the Commission. The second letter was issued by the respondent on March 12, 1982, thereby becoming the letter of discharge ab initio. Nothing argued by the appellant indicates that the imposition of this penalty constitutes a violation of either

due process or the concept of fundamental fairness.

ORDER

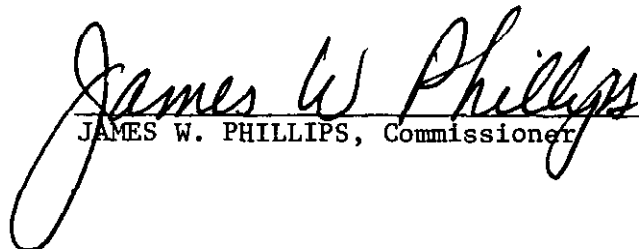
The respondent's motion to dismiss for lack of jurisdiction is denied and appellant's motion to limit issues at hearing is denied. The parties will be contacted in order to schedule a date for hearing.

Dated: August 5, 1982

STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson


LAURIE R. McCALLUM, Commissioner


JAMES W. PHILLIPS, Commissioner

KMS:ers

Parties

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