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 ANDREW STEINICKE, \*  
 \*  
                   Appellant, \*  
 \*  
 v. \*  
 \*  
 President, UNIVERSITY OF \*  
 WISCONSIN, and Administrator, \*  
 DIVISION OF PERSONNEL, \*  
 \*  
                   Respondents. \*  
 \*  
 Case No. 82-76-PC \*  
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INTERIM DECISION  
AND ORDER

This matter is before the Commission on the respondent's motion to dismiss for lack of subject matter jurisdiction. The essential facts relating to subject matter jurisdiction do not appear to be in dispute and are set forth hereafter.

The appellant's probationary employment with the UW System was terminated before he achieved permanent status in class. Alleging that the discharge action was an act of reprisal by the employer in violation of the Code of Ethics, ch. Pers 24.04(2)(c), Wis. Adm. Code, the appellant requested that action be taken by the administrator pursuant to §Pers 24.06. The administrator in response conducted an investigation of the termination and found no probable cause to believe that a violation of the Code of Ethics had occurred, and declined to refer the matter further. The appellant appealed the decision of the administrator to this Commission.

Section 230.44(1)(a), stats., provided as follows:

"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 employment units under §230.30, shall be to the Commission."

The respondents argument may be summarized by the following language from the brief submitted by DER:

"It is clearly expressed in the above subsection that the jurisdiction of the Commission is limited to certain decisions of the Administrator. If the Legislature intended the Commission to have jurisdiction over all personnel decisions of the administrator, the Legislature could have and would have simply expressed this intent in the language of the statute. Instead, the Legislature chose to limit the scope of inclusion here by providing a list of specific examples."

\* \* \*

"Applying the 'ejusdem generis' doctrine to §230.44(1)(a), Stats., it is manifestly evident that all of the specific acts of the administrator listed after the general phrase 'personnel decision' are personnel actions which are required of the Administrator pursuant to the provisions of the Civil Service Act, subch. II of ch. 230, Stats. Therefore, jurisdiction of appeals under §230.44(1)(a), Stats., must be limited to only those actions authorized by subch. II of ch. 230, Stats."

Assuming for the moment that there are present the prerequisites for the application of ejusdem generis, the Commission is not convinced that the "common thread" running through the enumerated transactions is that they are under the authority of subchapter II of chapter 230. The respondent's suggest that if the legislature had intended the term "personnel decisions" to include all personnel decisions it would have so stated, rather than to have provided a list of specific types of decisions, which evinces the legislative intent "to limit the scope of inclusion ..." However, if the legislature had intended to limit appeals under §230.44(1)(a) to personnel decisions under subchapter II of chapter 230, it might also be suggested that the legislature simply would have so stated rather than having used the language it did.

The subject matter suggested by the respondent - personnel decisions under subchapter II of chapter 230 - is not of a nature that cannot be stated simply and straightforwardly. It is not of the nature of, a subject matter like "grievous bodily harm" or some similar concept for which an enumeration of specific examples may be desirable or necessary for a comprehensible expression of legislative intent.

In Milwaukee Gas Light Co. v. Dept. of Taxation, 23 Wis. 2d 195,203-204 (1964), the court was called on to interpret the meaning of the word "including" as used in §71.04(2), Stats. <sup>FN</sup>

The court's holding included the following discussion:

"The United States supreme court in Federal Land Bank v. Bismark Lumber Co., (1941) 314 U.S. 95, 100 62 Sup. Ct. 1, 86 L.Ed. 65, pointed out 'that the term 'including' is not one of all-embracing definition, but connotes simply an illustrative application of the general principle.'

We are satisfied that to interpret the word 'including' in sec.71.04(2), Stats., as being a word of limitation or restriction would be to accord it the exceptional rather than the commonly accepted meaning. It is much more likely that the legislature employed such term to make sure that depreciation due to use, wear and tear was deductible as an ordinary and necessary business expense. Therefore, we accord to 'including' its more commonly accepted meaning of classifying that which follows as being a component part of the whole."

There is no reason to infer that in §230.44(1)(a) the legislature used the enumeration of specific transactions to limit the appealability of "personnel decisions" to a certain class of "personnel decisions," rather than to provide examples of "personnel decisions" and/or to make sure that those enumerated transactions would be considered appealable.

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FN

"Every corporation ... shall be allowed to make from its gross income the following deductions"

(2) Other ordinary and necessary expenses actually paid within the year out of the income in the maintenance and operation of its business and property, including a reasonable allowance for depreciation by use, wear and tear of property from which the income is derived."

The fact that the enumerated transactions are all included within subchapter II of chapter 230 is not remarkable inasmuch as the bulk of the administrator's authority is derived from that subchapter.

ORDER

The respondent's motion to dismiss for lack of subject matter jurisdiction is denied.

Dated: Sept. 23, 1982

STATE PERSONNEL COMMISSION

Donald R. Murphy / J  
DONALD R. MURPHY, Chairperson

Laurie R. McCallum / ers  
LAURIE R. McCALLUM, Commissioner

James W Phillips  
JAMES W. PHILLIPS, Commissioner

AJT:ers

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