

STATE OF WISCONSIN

PERSONNEL COMMISSION

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GARRY SCHAEFFER,
 DAVID BARTH, & KARL HACKER,
 Appellants,
 v.
 Secretary, DEPARTMENT OF
 TRANSPORTATION,
 Respondent.
 Case No. 83-0059-PC

* * * * *

DECISION
 AND
 ORDER

This matter is before the Commission on the respondent's objection to subject matter jurisdiction. The parties have filed briefs. The following facts relating to jurisdiction do not appear to be in dispute.

On August 17, 1982, the appellant filed the following appeal which was assigned case number 82-173-PC:

This letter is in response to the denial of my reclassification which I received on July 21, 1982.

I feel that the percentages used and the duties described are not in line with the actual duties I was assigned.

Therefore, I am submitting this request for an appeal to the decision rendered by the Department of Transportation.

The hearing in the aforesaid case was postponed a number of times, and the parties agreed to hold further proceedings therein in abeyance pending a jurisdictional decision in No. 83-0053-PC, a related case.

The instant appeal arose out of an appeal letter filed April 14, 1983, which was assigned case no. 83-0059-PC and which contained the following statement of appeal:

The position previously occupied by Garry Schaeffer has recently been filled by an LTE. The use of the LTE, under these facts and circumstances, is illegal, unlawful, and abuse of discretion.

In the event this appeal should have been filed with the administrator, a carbon copy of same is being forwarded this day to his office.

Subsequently, a letter filed May 3, 1983, by the appellant's attorney, stated:

Appellants, Garry Schaeffer, Local 221, and AFSCME, Council 24 appeal to the State Personnel Commission the matter of the continuing refusal of the Administrator to provide a hearing or any other response to the original appeal letter in this matter dated April 13, 1983.

In order for the Commission to have jurisdiction over this appeal, there must be a statutory provision that provides for appeals of such subject matter to this body. The appeal by its terms concerns the alleged improper use of an LTE (limited term employe) by management.

There are no statutory provisions for an appeal of this subject matter. This case clearly does not involve a disciplinary action under §230.44(1)(c), nor a "personnel action after certification which is related to the hiring process in the classified service" under §230.44(1)(d).

This matter also is not cognizable under §230.44(1)(b), Stats., which provides for appeals of actions "delegated by the administrator to an appointing authority under §230.05(2)...." The latter subsection provides, in part, that:

... the administrator may delegate, in writing, any of his or her functions set forth in this subchapter to an appointing authority....

The assignment of duties to an LTE is not one of the functions of the administrator set forth in Subchapter II of Chapter 230. Rather, it is a function of the appointing authority, see §230.06(1)(b), Stats.:

(1) An appointing authority shall:

* * *

(b) Appoint persons to or remove persons from the classified service, discipline employes, designate their titles, assign their duties and fix their compensation, all subject to this subchapter and the rules provided thereunder.

The appellants also attempt to characterize this matter as an appeal pursuant to §230.44(1)(a), Stats., of the failure of the administrator to have taken any action on their original appeal to the Commission, a carbon copy having been sent to him at that time.

Prior to the enactment of Chapter 230, Stats., by Chapter 196, Laws of 1977, §16.03(4)(a), Stats., provided for appeals to the director of the bureau of personnel of personnel decisions of appointing authorities that were alleged to be illegal or an abuse of discretion. Decisions of the director on such appeals could then be appealed to the Personnel Board pursuant to §16.05(1)(f), Stats. (1975).

The current Chapter 230, subchapter II, has no counterpart to the appeal to the director provided in §16.03(4)(a), Stats. The Commission cannot accept the notion that the failure of the administrator to have acted on a carbon copy of the appeal letter to the Commission is a "personnel decision of the administrator" which is appealable to the Commission under §230.44(1)(a), Stats.

Finally, this matter does not involve an appeal of a grievance pursuant to §230.45(1)(c), Stats.

The appellants cite several instances wherein the Personnel Board decided, on the merits, appeals involving the use of LTE's. However, these all involved grievances filed through the unilateral (non-contractual) grievance procedure under the framework provided by the then existent Chapter 16.

ORDER

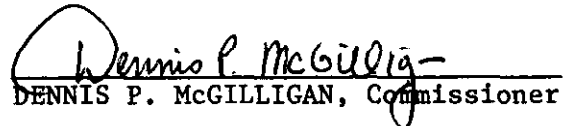
This appeal is dismissed for lack of subject matter jurisdiction.

Dated: July 7, 1983 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson


LAURIE R. McCALUM, Commissioner

AJT:jmf


DENNIS P. MCGILLIGAN, Commissioner

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