

STATE OF WISCONSIN

PERSONNEL COMMISSION

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*
JEROME COLLINS, *
*
 Complainant, *
*
v. *
*
Secretary, DEPARTMENT OF *
HEALTH AND SOCIAL SERVICES, *
*
 Respondent. *
*
Case No. 83-0080-PC-ER *
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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 charge of discrimination which was filed June 10, 1983, names the Division of Vocational Rehabilitation as the respondent, and states in part as follows:

I was refused funding for an O.J.T. which means on the job training at Turning Point by D.V.R. on or about 11/22/82.

The department makes the following argument in support of its motion:

The complainant, Jerome Collins, is a client of DVR. There is no employe/employer relationship; therefore there is no jurisdiction under Sec. 111.375 Wis. Stats. for the Personnel Commission to make any investigation or determination in this matter.

Jurisdiction under the Fair Employment Law, Subchapter II of Chapter 111, Stats., is not limited to employers. The law also covers employment agencies. See §111.321, Stats. It appears that while DVR was not acting as an employer, it may have been acting as an employment agency. See §111.32(7), Stats.:

'Employment agency' means any person, including this state, who regularly undertakes to procure employes or opportunities for employment for any other person.

However, pursuant to §111.375(2), Stats., this Commission only has jurisdiction over "... complaints of discrimination or unfair honesty testing against the agency as an employer...." (emphasis supplied). Therefore, it would appear that jurisdiction over this matter resides in the Department of Industry, Labor and Human Relations (DILHR).

ORDER

This charge of discrimination is dismissed for lack of subject matter jurisdiction and the complaint will be forwarded to DILHR.

Dated: August 17, 1983 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson

AJT:jmf


DENNIS P. MCGILLIGAN, Commissioner

Parties:

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