STATE OF WISCONSIN PERSONNEL COMMISSION

JAMES PAWLAK,

Appellant,

v.

Secretary, DEPARTMENT OF HEALTH AND SOCIAL SERVICES,

Respondent.

Case No. 83-0170-PC

DECISION AND ORDER

This matter is before the Commission on respondent's objection to subject matter jurisdiction, both parties having filed briefs thereon.

This is an appeal pursuant to §230.45(1)(c), Stats. of a noncontractual grievance with respect to a reprimand for "failure to provide accurate and complete information when required by management.

The question of the Commission's jurisdictional over such matters was discussed at considerable length by the Dane County Circuit Court in DOT v. Personnel Commission (Kennel, Brauer, & Murphy), No. 79CV1312 (7/21/80). While §230.45(1)(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 procedure." (emphasis supplied),

no such rules had been promulgated either as of the date of the Kennel, Brauer and Murphy case, or before March 1, 1984.

The Court held that in the absence of these rules, the parameters of the Commission's jurisdiction over conditions of employment under §230.45(1)(c) were determined by reference to the pre-existing administra-

tive framework[1] provided by the APM setting forth the noncontractual employe grievance procedures. This APM permits the processing of non-contractual employe grievance complaints to the fourth step only when there is an allegation that the employing agency has violated a civil service rule or statute

In its brief on jurisdiction, the respondent argues that the appellant has not made such an allegation. In his brief, the appellant does not proffer any such allegation,[2] but rather makes a number of arguments why jurisdiction is present notwithstanding the absence of such an allegation.

He argues that the respondent has "granted leave" to appeal to this Commission, because the DHSS supervisor's manual states that grievances concerning conditions of employment "may be further appealed to the State Personnel Commission."

Clearly, the DHSS "Supervisor's Manual" could not confer jurisdiction on the Commission where none existed by law. To the extent that the manual may be construed as suggesting that the aforesaid APM requirement of an allegation of a violation of the civil service code is not a jurisdictional prerequisite, it is contrary to Judge Currie's decision in the Kennel, Brauer and Murphy case and is erroneous.

The appellant also cites his rights under the Wisconsin Constitution to petition the government, and for a prompt remedy for injuries or wrongs. However, these provisions are general in nature and cannot override

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[1] See §129(4q), ch. 196, Laws of 1977.

[2] There do not appear to be any provisions in the civil service code addressing the subject of reprimands.

statutory requirements for administrative jurisdiction. Compare, Scholberg v. Itnyre, 264 Wis. 211, 58 N.W. 2d 698 (1953); New York Life Ins. Co. v. State, 192 Wis. 404, 211 N.W. 288 (1926); Metzger v. Wis. Dept. of Taxation, 35 Wis. 2d 119, 150 N.W. 2d 431 (1967).

The appellant also suggests he is entitled to a hearing under §227.064, Stats.:

> §227.064 Right to hearing. (1) In addition to any other right provided by law, any person filing a written request with an agency for hearing shall have the right to a hearing which shall be treated as a contested case if:
>
> (a) A substantial interest of the person is injured in fact or threatened with injury by agency action or inaction;
>
> (b) There is no evidence of legislative intent that the interest is not to be protected;
>
> (c) The injury to the person requesting a hearing is different in kind or degree from injury to the general public caused by the agency action or inaction; and
>
> (d) There is a dispute of material fact.

Before the appellant would be entitled to a hearing before this Commission, he must either have suffered an injury by Commission action or inaction or be threatened with injury.

The only "injury" allegedly suffered by the appellant has been at the hands of DHSS, not this Commission. The only conceivable injury he might suffer from the Commission (i.e., "threatened" injury) would be if his request for a hearing were denied. At this point, the matter becomes entirely circular: if the Commission denies his request for a hearing, he is injured by the lack of a hearing, and therefore the Commission should grant his request for a hearing. This clearly is not what the legislature intended by "threatened" injury; if failure to hold a hearing qualified as a "threatened" injury, the criterion set forth in §227.064(1)(a), Stats., would be meaningless.

ORDER

The respondent's objection to subject matter jurisdiction is sustained and this appeal is dismissed.

Dated: March 14, 1984 STATE PERSONNEL COMMISSION

DONALD R. MURPHY, Chairperson

LAURIE R. McCALLUM, Commissioner

DENNIS P. McGILLIGAN, Commissioner

AJT:jmf
JPD06

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