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 *
 LINDA HART, *
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 Appellant, *
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 v. *
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 President, UNIVERSITY OF *
 WISCONSIN and Secretary, *
 DEPARTMENT OF EMPLOYMENT *
 RELATIONS, *
 *
 Respondents. *
 *
 Case No. 83-0190-PC *
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DECISION
AND
ORDER

This case is before the Commission on respondents' objection to subject matter jurisdiction. The parties have filed briefs.

The following facts relating to jurisdiction as set forth in the appellant's brief appear to be undisputed and are adopted by the Commission as its findings as to jurisdiction:

On February 14, 1983, appellant, then working as a limited term employe for the University of Wisconsin-Oshkosh, was appointed to a project appointment as a Program Assistant 1, associated with Project Success supervised by Dr. Robert Nash, University of Wisconsin-Oshkosh. Appellant worked in that capacity until July 25, 1983, when she was discharged from her position by Dr. Robert Nash, her immediate supervisor, which discharge was thereafter confirmed and adopted by the University of Wisconsin-Oshkosh... and confirmed by the University of Wisconsin System... Appellant ... appealed the actions of the University of Wisconsin-Oshkosh and Dr. Nash.

In two prior decisions, this Commission has held that it lacks jurisdiction over appeals of the discharges of project employes. See LaPorte v. DILHR, 81-153-PC (10/30/81); Busch v. HEAB, 82-58-PC (6/25/82).

These decisions were based primarily on the fact that §230.44(1)(c), Stats., the only possible basis of jurisdiction, provides for an appeal of a discharge, but only as to an employe with "permanent status in class,"

who alleges that the discharge was without just cause, and the law makes it clear that a project employe cannot have permanent status in class:

'Project appointment' means the appointment of a person to a project position under conditions of employment which do not provide for attainment of permanent status. §ER-Pers 1.02(13m), Wis. Adm. Code.

Employes serving a project appointment shall:

* * *

(3) Be ineligible to attain permanent status as a result of the project appointment. §ER-Pers 34.07(3), Wis. Adm. Code.

Furthermore, the requirement that a discharge be for just cause is limited to employes with permanent status in class. See §230.34(1)(a), Stats.

The appellant's argument may be summarized, as set forth in her brief, as follows:

Section 230.27, Stats., deals with project employment and project appointments. Included in Section 230.27(2), Stats., is the following grant of substantive rights:

"An employe in a project position on a project appointment basis, while in the position, shall earn and receive all rights and privileges specifically authorized by statute for non-represented classified employes, except tenure, transfer, reinstatement, promotion eligibility and lay-off benefits."

Recognizing the limited nature of project employment, the rights of such project appointments are restricted by the exceptions noted thereto. While the rights of project appointment are limited, however, the exceptions so noted do not include excepting those rights attendant to employe discharge. Consequently, the general granting language of the above section entitles project appointments to all statutory rights and privileges relating to discharge specifically authorized by statute for nonrepresented classified employes. Those rights, succinctly stated, are two; first, the right to be discharged only for just cause. Section 230.34(1)(a) and (ar); second, should such discharge occur, the right to appeal such discharge to the Personnel Commission. Section 230.44(1)(c), Stats. Appellant therefore submits that since the above rights, including the right to appeal, are specific rights authorized by statute for nonrepresented classified employes, Section 230.27(2), Stats. bestows those very same rights upon project employes.

Laying to one side the question of whether the term "except tenure" in §230.27(2) in itself excludes the right to appeal a discharge, the major difficulty with appellant's argument is that it does not follow that the "rights and privileges specifically authorized by statute for non-represented classified employees" includes the right to be discharged only for just cause and the right to appeal such discharges to the Commission. Both such rights are limited to non-represented classified employees with permanent status in class. See §§230.34(1)(a), 230.44(1)(c), Stats.

The appellant has failed to deal convincingly with this difficulty:

It is acknowledged that the statutory sections granting the two above mentioned rights do refer to "employees with permanent status in class" as those with whom the rights are associated. Whereas, section 230.28(2), Stats. grants project appointments certain rights associated with "classified employees". The linkage, however, is made between "classified employees" and "employees with permanent status and class" by noting that classified employees gain permanent status and class unless terminated by the appointing authority prior to the completion of his or her probationary period. Section 230.28(2), Stats.

It does not follow that, because a classified employee gains permanent status unless terminated prior to the completion of his or her probationary period, that the legislative grant to project employees, who can never achieve permanent status in class, of the rights of non-represented classified employees, was meant to include the rights to appeal discharges.

The appellant also argues:

Furthermore, since the right of a project appointment to be discharged only upon just cause is bestowed upon a project appointment through the incorporation of an already existing statute making reference to such right with respect to employees with permanent status in class, it is not inconsistent for the statutory section authorizing appeal to the Commission for a violation of said right to apparently restrict such right only to employees with permanent status in class. Such language, when analyzed in conjunction with the rights granted to project appointments in Section 230.27(2), does not restrict the project appointments' right to appeal a discharge, but in fact is the vehicle by which a project appointment can utilize the appeals grounds granted by that statute.

Again, the Commission cannot agree with the initial premise for this proposition.

The Commission concludes that it lacks jurisdiction over the subject matter of this appeal and that it must be dismissed.

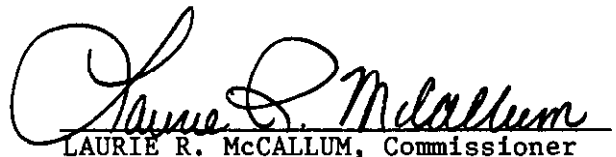
ORDER

This appeal is dismissed for lack of subject matter jurisdiction.

Dated: November 9, 1983 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson

AJT:jmf


LAURIE R. McCALLUM, Commissioner


DENNIS P. MCGILLIGAN, Commissioner

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