

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 *
 WISCONSIN STATE EMPLOYEES *
 UNION, *
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 Appellant, *
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 v. *
 *
 President, UNIVERSITY OF *
 WISCONSIN, *
 *
 Respondent. *
 *
 Case No. 84-0019-PC *
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DECISION
 AND
 ORDER

On January 31, 1984, the Commission received a letter of appeal from Allen Highman, Field Representative of the Wisconsin State Employees Union, stating in part:

The Wisconsin State Employees Union is appealing the continuing use and misuse of project positions by the University of Wisconsin-Madison in the MARC Department of the Memorial Library.

A prehearing conference was held on March 1, 1984. The conference report indicates that the respondent raised a jurisdictional objection, "arguing that the Commission lacks the authority to review this case under Chapter 230 of the Statutes." A briefing schedule was established.

In its brief, the appellant summarized its appeal as follows:

On or about October 1, 1983, the University of Wisconsin hired six (6) project employees at the Memorial Library for the reported purpose of cataloguing a large backlog of previously uncatalogued reference materials. The backlog began in the 1960's and permanent staff have been unable to eliminate it (respondent's brief, page 1). Respondent argues that the work of bringing this cataloguing up to date is not regarded as a continuing function of the library (respondent's brief, page 1, paragraph 2). The appellant will show through the library's own statistics that this work, performed by project appointments, is in fact ongoing and additionally, all the project appointed positions are not performing the duties of reducing the backlog as originally requested.

Pursuant to §230.44(3), Stats., appeals must be filed "within 30 days after the effective date of the action, or within 30 days after the appellant is notified of the action, whichever is later" or the appeal "may not be heard" by the Commission. This provision has been construed by the Commission as being jurisdictional in nature. Richter v. DP, 78-261-PC (1/30/79). To the extent that the appellant is appealing an action taken before January 1, 1984 (or with notice before that date), the appeal is untimely filed. Therefore the hiring decision made on or about October 1, 1983, as well as any decision to utilize project positions for cataloguing purposes, is beyond the scope of the Commission's jurisdiction.¹

Even if the instant appeal had been timely filed, the Commission would not have the authority to review the decision to create the project positions. In the case of Manlove v. DILHR, 80-335-PC (4/23/81), the Commission ruled that it lacked authority to hear an appeal objecting to a decision to fill a position with a project limited term employe, and stated, in part:

The respondent, through her representative, argues in her brief on jurisdiction that 'the decision to create a project position is appealable to the Commission,' as a decision of the administrator or his delegate, pursuant to §230.44(1)(b) and (d), Wisconsin Stats.

The respondent has not cited any authority for the proposition that the creation of a project position is a decision of the administrator, and the Commission can find none. Section 230.27, the section in the Civil Service code dealing with 'Project employment and appointments,' does not deal with the creation of

¹In its brief, appellant suggests that the timeliness issue was not raised during the prehearing conference and therefore should not be considered by the Commission "at this time." However, as noted above, the timeliness issue is a jurisdictional question based upon the language of §230.44(3), Stats. Therefore, the issue falls within the scope of the jurisdictional objection raised by the respondent during the prehearing conference.

project positions. Section 16.505 Stats. deals with 'Position authorization' and provides as relevant:

(1) No position, as defined in §230.03(11), regardless of funding source or type, may be created unless authorized by one of the following:

- (a) The legislature by law or in budget determinations.
- (b) The Joint Committee on Finance acting under §13.101 or as otherwise provided by law.
- (c) The Governor acting under §16.54 or creating positions under §20.001(2)(b) or (c).

Based on the precedent of Manlove, the Commission may not review a decision to create project positions to perform a specific function.

The Commission also lacks the authority to review the appropriateness of the duties currently assigned to the project positions. It has frequently been held that the Commission has no jurisdiction over work assignments unless the job assignment results in a personnel action cognizable under one of the specific provisions in §§230.44 or .45, Stats. Request for Declaratory Ruling, 77-181 (6/1/81); Kienbaum v. UW, 79-146-PC (4/24/80).

For the reasons outlined above, this case must be dismissed.

ORDER

This matter is dismissed due to lack of subject matter jurisdiction.

Dated: April 25, 1984 STATE PERSONNEL COMMISSION

KMS:jat


LAURIE R. McCALLUM, Commissioner


DENNIS P. MCGILLIGAN, Commissioner

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