

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 \*  
 WISCONSIN FEDERATION OF \*  
 TEACHERS, \*  
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 Appellant, \*  
 \*  
 v. \*  
 \*  
 Administrator, DIVISION OF \*  
 MERIT RECRUITMENT & SELECTION \*  
 \*  
 Respondent. \*  
 \*  
 Case No. 84-0154-PC \*  
 \*  
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INTERIM  
 DECISION  
 AND  
 ORDER

On June 27, 1984, a representative of the appellant sent a letter to the respondent, asking her to audit certain hiring actions taken by the Department of Health and Social Services:

In September, 1981, two teachers were hired by Green Bay Correctional Institution, Department of Health and Social Services, as half-time project employees. The project positions were, apparently, created prior to that date. According to the information we have received, these positions will continue until at least late summer, 1985. Currently these teachers are working more than half-time.

In accordance with Wisconsin Personnel Manual - Staffing, Ch. 248, (July, 1983) project positions which have a probable ending date of 18 months or more should be filled as project-permanent rather than project-project.

We are requesting that you audit the actions of the Department of Health and Social Services in filling these positions and, if appropriate, order the Department to fill them on a project-permanent basis. We would appreciate a decision by July 16, 1984. Thank You.

Respondent replied by letter dated July 26, 1984:

As we discussed over the telephone on Wednesday, July 25, 1984, the Division of Merit Recruitment and Selection will not be issuing an order to the Department of Health and Social Services regarding the hiring practices for project positions. As we further discussed, this issue is perhaps one which would be more appropriately addressed by the Personnel Commission.

The appellant promptly filed a letter of appeal with the Personnel Commission. At a prehearing conference held on September 28, 1984, the parties were unable to agree on an appropriate issue for hearing. The respondent proposed the following issue:

Whether the respondent abused her discretion in not issuing an order to the Department of Health and Social Services regarding the hiring practices for the two half-time project positions for teachers at Wisconsin Correctional Institution - Green Bay.

The appellant's proposal reads as follows:

Was the decision of the Administrator of the Division of Merit Recruitment and Selection refusing to audit the action of the Department of Health and Social Service in continuing project appointments to two half-time project teacher positions at Wisconsin Correctional Institutions, Green Bay, and refusing to order DHSS to fill those positions on a permanent appointment basis, a violation of Chapter 230 (Section 230.05 and 230.27, Stats.) and the rules and policies promulgated thereunder.

There are two areas in which these two proposals may be distinguished. The first is the scope of the decision being appealed and the second is the standard of judgment to be applied.

#### Scope of the Decision

The appellant's June 27th letter asked the respondent to audit DHSS's actions and, if appropriate, to order corrective action. The respondent's proposed issue suggests that the Commission review only the decision to not issue a corrective order. In contrast, the appellant asks the Commission to review "the decision ... refusing to audit ... and refusing to order." By forming its proposal as it has, the appellant presupposes that the respondent decided not to audit DHSS's action. However, the respondent's July 26th letter gives no indication whether or not an audit was conducted. If evidence established that respondent did, in fact, audit DHSS's actions in regard to the two half-time project teacher positions, the first half of appellant's proposed issue becomes irrelevant. Therefore, the first issue

in this case must be whether the respondent refused to audit the particular action by DHSS.

Standard of Judgment

For two of the four subsections of §230.44(1), Stats., upon which an appeal may be filed with the Commission, the standard of judgment to be applied by the Commission is specified by statute. Pursuant to §230.44(1)(c), Stats., the Commission is to apply a standard of "just cause" when it reviews certain disciplinary decisions. Pursuant to §230.44(1)(d), Stats., the Commission is to determine whether post-certification actions related to the hiring process are "illegal or an abuse of discretion" in reviewing such actions. No standard of judgment is specified by statute for appeals from decisions made or delegated by the Administrator, DMRS or decisions made or delegated by the Secretary, DER (§230.44(1)(a)and(b), Stats.). However, the Commission has consistently reviewed those matters by applying the standard of whether the personnel action being appealed violated the relevant civil service statutes or rules. In cases involving reclassifications or reallocations, the issues generally have been phrased in terms of the "correctness" of the decision, thereby reflecting the requirement found in §230.09(1), Stats., that "[e]ach classification ... include all positions which are comparable." See, for example, Werth v. DP, 81-130-PC (8/5/81); Corning v. DER & DP, 82-185-PC (10/27/82). In examination cases, the issue is typically one of whether the examination was conducted in accordance with specific statutory provisions. See, for example York v. DP, 78-42-PC (7/18/80). One case in which the Commission applied an abuse of discretion standard was Johnson v. DP, 78-28-PC (4/3/79). There, the question was whether the administrator of the Division of Personnel had abused his discretion in denying

appellants request to initiate a personnel survey. There the statutory authority for the administrator to conduct such a survey specifically provided the administrator with the discretion to decide whether or not one should be initiated:

Such reviews may be initiated by the administrator after taking into consideration the recommendations of the appointing authority, or at his own or her own discretion. §230.09(2)(am), Stats. (1977).

No comparable discretion is granted in the instant case over project appointment approvals. Pursuant to §230.27(2), Stats.: "The administrator may provide by rule for the selection and appointment of a person to a project position." Among those rules promulgated by the administrator on the topic of project appointments is §ER-Pers 34.03(1), Wis. Adm. Code, which provides:

A project position may be filled on a project appointment basis only after approval by the administrator. Project appointments shall be made so as to contribute to a competent and balanced work force.

For the above reason, the appellant's statement of issue more accurately describes the standard of judgment to be applied in this case.

ORDER

As modified to reflect the proper scope of the decision being reviewed, the issue for hearing in this matter shall be as follows:

Was the decision, if any, of the Administrator of the Division of Merit Recruitment and Selection refusing to audit the action of the Department of Health and Social Services in continuing project appointments to two half-time project teacher positions at Wisconsin Correction Institutions, Green Bay, and refusing to order the Department of Health and Social Services to fill those positions on a permanent appointment basis, a violation of

Chapter 230 (Section 230.05 and 230.27, Stats.) and the rules and policies promulgated thereunder.

Dated: November 14, 1984 STATE PERSONNEL COMMISSION

KMS:jmf  
JPDO4/2

  
LAURIE R. McCALLUM, Commissioner

  
DENNIS P. MCGILLIGAN, Commissioner

Parties:

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