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 *
 BRENDA HAGMAN, *
 *
 Appellant, *
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 v. *
 *
 Secretary, DEPARTMENT OF *
 NATURAL RESOURCES, *
 *
 Respondent. *
 *
 Case No. 84-0194-PC *
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DECISION
 AND
 ORDER

This matter is before the Commission on respondent's motion to dismiss for lack of jurisdiction. The parties entered into a stipulation of facts as set forth in the findings of fact, below.

FINDINGS OF FACT

1. Effective July 13, 1981, Ms. Hagman was reinstated to the position of Environmental Specialist-3 (15-13) with the Department of Natural Resources' Bureau of Wastewater Management. Her position was located within the Bureau's Permit Unit of the Municipal Wastewater Section.
2. In a memorandum dated September 8, 1983, from C.J. Blabaum to L.F. Wible ... a temporary restructuring of the Bureau of Wastewater Management's organizational framework was proposed effective September 12, 1983. This temporary reorganization was approved by Administrator Wible on September 11, 1983.

3. The above-described memorandum reflected that Brenda Hagman was the Acting Unit Leader for the Permit Unit of the Pretreatment and Permits Management Section. Further, the memorandum shows that Ms. Hagman received a carbon copy thereof.

4. On February 9, 1984, Stan Kleinert signed a Permit Unit Leader position description naming Ms. Hagman Permit Unit Leader.

5. In a memorandum dated April 26, 1984, from C.J. Blabaum to L.F. Wible ... confirmation of the Bureau of Wastewater Management's reorganization was requested. The reorganization was approved by Administrator Wible on May 3, 1984.

6. Ms. Hagman continued as the Acting Unit Leader for the Permit Unit. The memorandum shows that Ms. Hagman received a carbon copy thereof.

7. The Department of Employment Relations was neither notified of Ms. Hagman's acting position nor requested by the Department of Natural Resources to approve the extension of the acting position beyond the 45 days from creation of the acting position.

8. On August 20, 1984, Ms. Hagman was permanently promoted to the position of Permits Unit Leader (Environmental Program Supervisor 2 (PR 01-13)) for the Bureau of Wastewater Management, Pretreatment and Permits Management Section effective August 19, 1984. Ms. Hagman was required to serve a one (1) year probationary period with an increase in salary after satisfactory completion of the first six months.

9. On August 30, 1984, Ms. Hagman was advised of her promotion to the position of Air and Solid Waste Enforcement Unit Leader (Environmental Specialist-6 (15-06)). Accordingly, Ms. Hagman was required to serve a six (6) months probationary period.

10. Ms. Hagman was still serving her probation for her appointment for Permits Unit Leader when she accepted the promotional appointment to Air and Solid Waste Enforcement Leader.

11. Prior to becoming Acting Unit Leader for the Permits Unit on September 12, 1983, Ms. Hagman earned \$9.198/hour. Ms. Hagman's salary did not increase during her acting capacity until she received a 3.84% pay increase on July 1, 1984.

12. Upon her appointment as Permits Unit Leader, she received a step increase to \$10.508/hour. Upon her appointment to Air and Solid Waste Enforcement Unit Leader, she received an increase to \$10.983 which represented the minimum in that pay range.

CONCLUSION OF LAW

The Commission lacks jurisdiction over this appeal.

OPINION

This appeal is premised on the contention that respondent violated §§ER-Pers 32.02, .03 and .04, Wis. Adm. Code, by failing to seek and obtain approval from the Administrator of the Division of Merit Recruitment and Selection (DMRS), Department of Employment Relations (DER) for extending appellant's acting assignment beyond the 45 day and six-month periods

established in those rules.¹ In her letter of appeal, the appellant sought the following relief:

1. Retroactive assignment and compensation to September 12, 1983.
2. Step salary increase six months after September 12, 1983.
3. End of probation six months after September 12, 1983.
4. 3.84% salary adjustment beginning in fiscal year 1985.
5. 10% salary adjustment for promotion beginning September 17, 1984.

¹ ER-Pers 32.02 Approval of the administrator. The appointing authority shall submit a written request to make acting assignments which exceed 45 calendar days in length to the administrator for approval. This request shall state the anticipated duration of the acting assignment and provide such additional information as the administrator requires. Acting assignments not to exceed 45 calendar days shall be made at the discretion of the appointing authority.

ER-Pers 32.03 Duration of acting assignments. (1) the acting assignment shall not exceed a total of 6 months, except as provided in sub. (2).

(2) If the appointing authority is unable to make a permanent appointment to that position within that 6-month period, a written request for approval to extend the acting assignment shall be submitted to the administrator. The extension request shall indicate the expected date by which a permanent appointment shall be made.

ER-Pers 32.04 Letter of notification. The appointing authority shall give written notice to both the employe and the administrator of the acting assignment. This letter of notification shall identify the nature of the duties to be assigned, the planned duration and other conditions of the acting assignment, including the fact that no adjustment in pay shall be made.

The appellant subsequently withdrew her request to predate the starting date of her appointment to Environmental Program Supervisor 2 and asked the Commission to order respondent to compensate her for the actual value of her services provided to the respondent during the period she was invalidly employed.

The respondent has raised several jurisdictional arguments in this case. The Commission will only examine the question of whether the subject matter of the appeal falls within the statutorily-prescribed limits to the Commission's jurisdiction.

The action being complained of here is an action by the respondent in his capacity of an appointing authority. The provisions of ch. ER-Pers 32, Wis. Adm. Code, indicate that it is the appointing authority's responsibility to submit acting assignment requests to the Administrator, DMRS, for approval. Of the jurisdictional provisions set out in §230.44(1), Stats.², the subject of this appeal is not a "personnel decision made by the administrator [of DMRS] or by an appointing authority under authority delegated by the administrator," §230.44(1)(a), Stats., nor is it one of the enumerated decisions made by the Secretary of DER that are appealable under

² Some additional jurisdictional bases for filing appeals as well as complaints of discrimination/retaliation are found in §230.45(1), Stats. However, none of those provisions are remotely applicable to the instant case.

§230.44(1)(b), Stats.³ The instant appeal is also not an appeal from a disciplinary action under §230.44(1)(c), Stats., nor is it an appeal of a "personnel action after certification which is related to the hiring process" under §230.44(1)(d), Stats.

The appellant argues that the Commission may review this matter under the terms of §230.41, Stats., which provides in part:

Any person employed or appointed contrary to this subchapter, or the rules established thereunder, shall be paid ... the compensation agreed upon ... or in case no compensation is agreed upon, the actual value of such services ... and shall have a cause of action against such appointing authority, for such sum and for the costs of the action.

The reference in §230.41, Stats., to having a "cause of action" and bringing an "action" relates to the title of ch. 801, Stats., "Civil Procedure - Commencement of Action and Venue." This reference establishes that "actions" brought under §230.41, Stats., are to be filed in circuit court. In contrast, the Commission may hear "appeals" and "complaints" as provided in §230.45, Stats. There is no reference in either §230.44(1) or in §230.45(1), Stats., that either expressly or implicitly authorized the Commission to preside over "actions" brought under §230.41, Stats.


For the reasons set out above, the Commission lacks the authority to hear this appeal.


³ These citations reflect statutory changes effectuated by sections 1617d and f of 1983 Wisconsin Act 27 effective in July of 1983.

ORDER

This matter is dismissed for lack of subject matter jurisdiction.

Dated: Jan. 30, 1985 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson


LAURIE R. McCALLUM, Commissioner


DENNIS P. MCGILLIGAN, Commissioner

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Parties

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