

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 \*  
 TINA BUECHNER, \*  
 CONNIE KOBERLE, \*  
 \*  
                   Appellants, \*  
 \*  
 v. \*  
 \*  
 Secretary, DEPARTMENT OF \*  
 EMPLOYMENT RELATIONS, and \*  
 President, UNIVERSITY OF \*  
 WISCONSIN SYSTEM (Madison) \*  
 \*  
                   Respondents. \*  
 \*  
 Case No. 85-0089-PC \*  
 \*  
 \* \* \* \* \*

FINAL  
 DECISION  
 AND  
 ORDER

NATURE OF THE CASE

This matter is before the Commission on respondent DER's motion to dismiss filed November 19, 1985.

OPINION

The Commission previously entered an interim decision and order dated September 13, 1985, over-ruling respondents' objection to subject matter jurisdiction. Respondent DER has again raised issues as to subject matter jurisdiction by its motion to dismiss filed November 19, 1985. It is axiomatic that questions as to subject matter jurisdiction can be raised at any time. Morgan v. Knoll, Wis. Pers. Bd. No. 75-204 (5/25/76); 2 Am Jur 2d Administrative Law, §726, p. 627. Therefore, notwithstanding its prior decision, the Commission must again review the question of whether it has jurisdiction over the subject matter of this proceeding.

At the center of the Commission's September 13 1985, interim decision and order was the conclusion that conceptually this matter could be viewed as an appeal of a layoff which could be heard under §230.44(1)(c),

Stats., "notwithstanding its overt focus on the states failure to restore fringe benefits."

On reconsideration of the jurisdictional issue, the Commission is compelled to conclude that this analysis was incorrect.

For obvious reasons, which are discussed in the interim decision, the appellants never appealed the initial layoff action by the state. After the appellants' fringe benefits (sick leave, vacation, length of service payments) were not reinstated, the appellant filed their appeal. In order to conceptualize this as an appeal of a layoff, it is necessary to equate in some fashion the employer's decision not to credit the employes with the prorated fringe benefits lost during the layoff, with a decision to lay them off.

A layoff is defined in the Wisconsin Administrative Code at §ER-Pers 22.02(1) as follows:

Layoff means the termination of the services of an employe with permanent status in class, in accordance with the procedure specified in this chapter, from a position in the class, class subtitle or progression series in which a reduction in force is to be accomplished."

The employes' lost fringe benefits are part of their damages resulting from the layoff. The employer's decision not to restore these lost fringe benefits simply does not equate with a decision to lay them off, as that term is defined in §ER-Pers 22.02(1).

In its interim decision and order, the Commission analogized to a hypothetical case where the employer rescinds a suspension and restores the lost salary, but not the lost benefits, subsequent to the suspension but prior to filing the appeal. While it is correct that the employer's action would not, in and of itself, prevent the employe from pursuing an appeal

already properly before the Commission, this does not address the question of whether an appeal of the refusal to restore the lost fringe benefits associated with the suspension could be conceptualized as an appeal of the suspension. For example, if the hypothetical employe had let 30 days elapse from the effective date of the suspension without filing an appeal, and subsequently the employer unilaterally rescinded the suspension but refused to restore all of the lost fringe benefits, it could not then be argued that the failure to have restored the fringe benefits could be appealed pursuant to §230.44(1)(c), Stats., as a suspension from employment.

If this case cannot be considered an appeal of a layoff that would be cognizable under §230.44(1)(c), Stats., there is no other basis upon which the Commission can exercise jurisdiction, as there is no statutory provision for an appeal of the denial of fringe benefits. Therefore, the respondent's motion to dismiss for lack of subject matter jurisdiction must be granted and this appeal dismissed.

ORDER

The respondent's motion to dismiss filed November 19, 1985, is granted, and this appeal is dismissed for lack of subject matter jurisdiction.

Dated: November 22, 1985 STATE PERSONNEL COMMISSION

  
DENNIS P. MCGILLIGAN, Chairperson

AJT:jmf  
ID10/1

  
DONALD R. MURPHY, Commissioner

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