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 \*  
 JOYCE L. LARSON, \*  
 \*  
                   Appellant, \*  
 \*  
 v. \*  
 \*  
 Secretary, DEPARTMENT OF \*  
 INDUSTRY, LABOR AND HUMAN \*  
 RELATIONS, \*  
 \*  
                   Respondent. \*  
 \*  
 Case No. 86-0013-PC \*  
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 \* \* \* \* \*

INTERIM  
 DECISION  
 AND  
 ORDER

This action is a motion by respondent to dismiss appellant's appeal for lack of jurisdiction. Neither party requested a hearing on the motion, but they filed written arguments on the question. The following findings of fact are based upon appellant's letter of appeal and the briefs of the parties.

FINDINGS OF FACT

1. Appellant, Joyce L. Larson, is employed as a Job Service Specialist 2, in the Marshfield Job Service office.
2. On January 23, 1986, she filed an appeal with the Commission alleging that respondent discriminated against her and arbitrarily and capriciously failed to select her for an Unemployment Benefits Specialist (UBS) position in its Wisconsin Rapids office.
3. This transaction, referred to by appellant as a denial of transfer, stems from a personnel action after certification of candidates to fill a vacant position.

4. At the prehearing conference held March 7, 1986, appellant's representative, Mr. Michael Sansone, stated that appellant was contesting the procedure used to fill the vacant position in Marshfield.

5. Respondent objected to the Commissions' jurisdiction and argued that these allegations -- raised during the prehearing conference -- were new, not covered in the letter of appeal and not filed within the statutory 30 day time requirement.

#### CONCLUSIONS OF LAW

1. The Commission has authority to decide the jurisdictional question before it.

2. Allegations expressed in appellant's letter of appeal may be amended prior to hearing.

3. Amendments, incorporated and made a part of the original appeal, relate back to the date of the appeal.

4. Other allegations of appellant made during the prehearing conference against respondent, which relate back the cause of the appeal, are amendments to the original appeal.

#### OPINION

The question presented is whether the appellant failed to appeal the hiring procedure used by respondent in filling the vacant UBS position in Marshfield within the 30 day time limit for the appeal, and, if so, is that fatal. We believe that the language of appellant's letter of appeal and her subsequent action demonstrate that this Commission has jurisdiction over this matter.

The appellant in her appeal to the Commission writes: "I am requesting a Personnel Commission hearing into a recent occurrence." After identifying herself and explaining that she had applied for a UBS position,

she continues: "The person selected is a much younger lady who has never been a permanent classified employe. I believe this action to be arbitrary, capricious and discriminatory, therefore I am requesting this hearing."

In the Commission's opinion, the language in appellant's appeal letter is sufficiently broad to include any issues arising from the personnel transaction of filling the vacant UBS position. Further, the Commission in Oakley v. Bartell, Wis. Per. Comm. 78-66-PC (10/10/78) said: "In judicial proceedings in this state the new code of civil procedure permits great liberality in amending proceedings." In that decision, the Commission, referring to §802.09(3), Stats., which provides for relation back of amended pleadings in instances where they arose out of the conduct set forth in the original proceedings, stated it would not adhere to a more stringent rule in its proceeding. That principle was reaffirmed in Fisk v. DOT, Wis. Per. Comm. Case No. 79-83-PC (1/23/80). From these decisions, it is clear the Commission believes appeal letters are generic and not inclusive.

ORDER



Respondent's objections to subject matter jurisdiction are overruled and another prehearing will be scheduled to set the issues and date for hearing.

Dated: June 12, 1986 STATE PERSONNEL COMMISSION

DRM:jmf  
ID6/1

Parties:

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