

LAWRENCE LANDWEHR,

Appellant,

v.

Secretary, DEPARTMENT OF
ADMINISTRATION,

Respondent.

Case No. 90-0289-PC

DECISION
AND
ORDER

This matter is before the Commission on the respondent's motion to dismiss. The parties have filed briefs. The following facts appear to be undisputed.

1. During the period of September of 1976 to June of 1983, the appellant served as an Assistant Professor at the University of Wisconsin-Oshkosh where he taught various courses including Criminal Law, Criminal Courts Proof of Guilt, Criminal Courts Procedure, Legal Administration of Justice, Constitutional Law, and American Government and Politics. During a portion of this period, the appellant also served as the coordinator of the Criminal Justice Program at UW-Oshkosh.

2. From June of 1983 until June of 1989, the appellant was employed in private legal practice.

3. In July of 1989, the appellant began work as Assistant District Attorney for Sauk County.

4. Pursuant to the provisions of Section 3058(1e), 1989 Wisconsin Act 31, persons employed as assistant district attorneys on December 31, 1989, had the option to transfer to state employment.

5. The appellant was offered and accepted an unclassified full time position as a state prosecutor, effective January 1, 1990. The offer included the following language regarding the appellant's salary and seniority date:

During January, the Department of Administration will verify your county salary as of December 31, 1989 and examine other factors which may cause adjustments to the tentative annual salary noted above. Your annual salary and seniority date will be finalized during the first three months of 1990.

6. In a letter dated June 12, 1990, and postmarked June 27, 1990, from J. Jean Rogers, an Administrator of the Department of Administration, Ms. Rogers denied appellant credit toward seniority for his employment from September of 1976 to June of 1983 as an Assistant Professor at the University of Wisconsin-Oshkosh.

7. The appellant filed a letter of appeal with the Commission on July 24, 1990.

The appellant offers the following argument in opposition to the respondent's motion to dismiss:

In this case, the decision was made by J. Jean Rogers, Administrator of the Department of Administration, to deny the appellant, Lawrence Landwehr, credit toward seniority for employment by the State of Wisconsin from September, 1976 to June, 1983. This is clearly a Personnel decision as contemplated by Section 230.44(1)(a). Additionally, Administrator Rogers denied Mr. Landwehr an adequate salary adjustment in recognition of relevant past education and experience. Again this is a Personnel decision. Pursuant to Wis. Stat. Sec. 230.44(1)(a), Mr. Landwehr may appeal the decision of the administrator to the Personnel Commission.

The language of §230.44(1)(a), Stats., permits appeals from a "personnel decision under this subchapter made by the administrator." The term "administrator" is defined in §230.02(1) and (10), Stats., as the Administrator of the Division of Merit Recruitment and Selection within the Department of Employment Relations. Ms. Rogers may hold the title of Administrator within the Department of Administration, but she does not serve as the Administrator of the Division of Merit Recruitment and Selection. Therefore, her decision denying a salary adjustment and establishing a seniority date is not reviewable by the Commission under §230.44(1)(a), Stats.¹

The Commission has reviewed the other provisions of §230.44(1), Stats., and concludes that none of these other paragraphs provide a jurisdictional basis for this appeal. Specifically, §230.44(1)(d), Stats., refers to the "hiring

¹The statutes expressly provide that the authority to fix a civil service employe's level of compensation rests with the appointing authority. §230.06(1)(b), Stats.

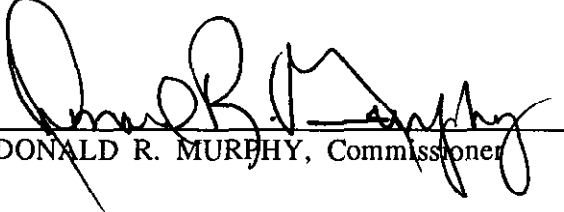
process in the *classified* service." It is undisputed that the appellant serves in the unclassified service.²

ORDER

This matter is dismissed for lack of subject matter jurisdiction.

Dated: June 12, 1991

STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Commissioner

KMS:kms:gdt


GERALD F. HODDINOTT, Commissioner

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²As provided in §978.12(1)(c), Stats., "[a]ssistant district attorneys shall be employed outside the classified service."