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PASTORI BALELE,
Complainant,

v.

Secretary, DEPARTMENT OF
INDUSTRY, LABOR AND HUMAN
RELATIONS,
Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,
Administrator, DIVISION OF
MERIT RECRUITMENT AND
SELECTION, and
Secretary, DEPARTMENT OF
ADMINISTRATION,

Respondents.

Case No. 95-0063-PC-ER

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RULING
ON
JURISDICTIONAL
OBJECTION

The respondent has raised a jurisdictional objection to a proposed issue for hearing. The issue, proposed by the complainant during a prehearing conference on July 3, 1995, reads as follows:

2. Whether respondents engaged in racketeering activities with respect to the decision in 1995 not to select the complainant to fill the position of Director of the Governor's Office of Workforce Excellence on a temporary basis and in converting the position in question to an unclassified position.

None of the statutory provisions which serve as the basis on which the Commission may exercise jurisdiction encompass an allegation of "racketeering." See, §§103.10, 230.44, and 230.45, Stats. Of these provisions, the most closely related is §230.44(1)(d), which provides:

A personnel action after certification which is related to the hiring process in the classified service and which is alleged to be illegal or an abuse of discretion may be appealed to the commission.

This provision permits the Commission to review decisions to select a candidate for a vacant civil service position, if the appellant/unsuccessful candidate al-

leges the decision was illegal or an abuse of discretion. While the statute does not otherwise describe what is intended by the word "illegal," it is reasonable to interpret the word to refer to an action taken that is contrary to the civil service statutes (subch. II, ch. 230, Stats) or the administrative rules promulgated thereunder. Nothing within those sources prohibit "racketeering" which is defined in §946.82(4), Stats. Allegations of criminal activity must be prosecuted in court, rather than before an administrative forum. If complainant was able to pursue his "racketeering" claim in the present case, the Commission would be operating in an area that is reserved to the courts. "[A]n administrative agency has only those powers which are expressly conferred or which are fairly implied from the four corners of the statute under which it operates." State (Dept. of Admin.) v. ILHR Dept., 77 Wis. 2d 126, 136, 252 N.W.2d 353 (1977).

Because the Commission lacks the authority to determine whether respondents engaged in "racketeering" activities, the hearing issue proposed by complainant is rejected.

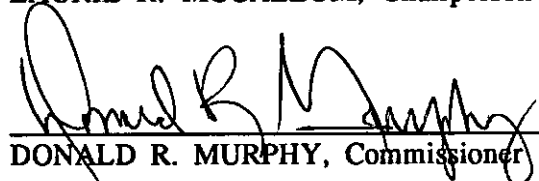
ORDER

Complainant's proposed issue for hearing is rejected for lack of jurisdiction. The matter may proceed to hearing based upon the issue agreed to by the parties during the July 3, 1995, conference.

Dated: October 16, 1995 STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

K:D:temp-10/95 Balele


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner