

STATE OF WISCONSIN

PERSONNEL COMMISSION

BRENDA J. BROWN,
Complainant,

v.

**Secretary, DEPARTMENT OF
CORRECTIONS,**
Respondent.

**RULING ON MOTION
TO DISMISS**

Case No. 99-0006-PC

On March 5, 1999, respondent filed a Motion to Dismiss for Lack of Jurisdiction. The parties were permitted to brief the motion and the schedule for doing so was completed on April 12, 1999. The following findings of fact are based on information provided by the parties, appear to be undisputed, and are made solely for the purpose of deciding this motion.

1. This appeal was filed by appellant by letter dated January 15, 1999. In her letter of appeal, appellant states as follows, in pertinent part:

. . . On 12/9/98, at 10:00 a.m., I interviewed for the Program Assistant Supervisor position at the Holton Office - Juvenile Corrections in Milwaukee, WI. . . .

On 12/17/98 I received a telephone call from Jan Long at approximately 12:30 p.m., who inquired if I could come to her office to discuss the duties of the Program Assistant Supervisor position in detail. . . . At 2:30 p.m., I arrived at the Holton - Juvenile Office . . . to meet with Ms. Long. . . .

At this time, Ms. Long and myself discussed the duties of the position in detail. After discussing the duties of the position, it was at this time that Ms. Long verbally offered the Program Assistant Supervisor position to me.

She informed me that she had been given the authority to make the decision as to who would be hired for the position as this individual would be reporting directly to her and she made the choice to offer the

position to me. She went on to state my references, my interview score, as well as my experience in working in Department based her decision to offer the position to me.

She told me she spoke with my previous supervisor, Barbara Rosetti, at length and received a very favorable reference from her, as well as from my other references.

I verbally accepted the position at this time and asked Ms. Long should I be notifying my supervisor of this offer. Ms. Long answered in the affirmative stating the anticipated start date of January 4, 1999. . . .

On 12/21/98, I received a telephone call from Ms. Long. She stated she forwarded all information regarding my hire to her supervisor, Thomas Vanden boom. It was brought to my attention that Mr. Vanden Boom received this information and when he noticed I had worked at an institution whose division he formerly headed, he telephoned the superintendent of this institution to get some "feed-back." It was at this time that I was informed Mr. Vanden Boom received "all this stuff" from the superintendent and subsequently took the authority of hiring away from Ms. Long. . . .

It was at this time that Ms. Long stated she "may have jumped the gun" in offering the position to me and that had she known about "all this stuff" she would not have offered the position to me. First and foremost, I was verbally offered the position. . . .

Mr. Vanden Boom did telephone me on 12/29/98, and told me he had talked to Ms. Long and stated that Ms. Long told him she did not offer me the position. He went on to inform me the position was still open and apologized for any inconvenience this matter may have brought on.

2. To date, the Program Assistant Supervisor position at issue here has not been filled.

3. Accompanying respondent's motion to dismiss were affidavits executed by Jan Long and Thomas Vanden Boom. In these affidavits, Ms. Long and Mr. Vanden Boom state, among other things, that Ms. Long did not offer the subject position to appellant and she did not have the authority to do so; that the position remains vacant; and that appellant remains on the list of eligible candidates for the position.

Respondent's theory underlying this motion to dismiss is that, since the subject position remains vacant, there is no personnel action from which appellant could appeal pursuant to §230.44(1)(d), Stats.

Section 230.44(1)(d), Stats., invests the Commission with the authority to review "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." The language of this statutory provision does not limit the scope of actions subject to review to only the hiring decision itself, but instead encompasses those actions "related to the hiring process." *See, e.g., LaSota v. DOC*, 94-1062-PC, 1/23/96; *Meschefske v. DHSS*, 88-0057-PC, 7/13/88. Here, appellant is not appealing the hiring decision, but is instead appealing respondent's alleged withdrawal of its offer of the position to her. As such, appellant's allegations here fit within the jurisdictional ambit of §230.44(1)(d), Stats.

Respondent also emphasizes in its motion and accompanying affidavits its position that Ms. Long did not offer the subject position to appellant and did not have the authority to do so. However, it is not clear how this meshes with or contributes to the theory underlying respondent's motion to dismiss. Moreover, accepting respondent's contentions here as a means of deciding this case without a hearing would involve the resolution of an issue of disputed fact which is not appropriate for resolution at this point in these proceedings.

CONCLUSIONS OF LAW

1. Appellant has the burden to show that the Commission has jurisdiction over this appeal pursuant to §230.44(1)(d), Stats.
2. Appellant has sustained this burden.

ORDER

Respondent's motion to dismiss is denied.

Dated: April 21, 1999

STATE PERSONNEL COMMISSION

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LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

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