

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JOHN LYDDY, Appellant,

v.

VILLAGE OF CAMP DOUGLAS, Respondent.

Case 1
No. 69295
PA(adv)-176

Decision No. 32989

Appearances:

Jay S. Carmichael and Zachary J. Kluck, Carmichael & Quartermont, S.C., 916 Oak Street, P.O. Box 725, Tomah, Wisconsin, 54660-0725, appearing on behalf of the Appellant.

John R. Orton, Curran, Hollenbeck & Orton, S.C., 111 Oak Street, P.O. Box 140, Mauston, Wisconsin, 53948-0140, appearing on behalf of the Respondent.

**ORDER DISMISSING APPEAL FOR
LACK OF SUBJECT MATTER JURISDICTION**

This matter is before the Wisconsin Employment Relations Commission (the Commission) on Respondent's motion to dismiss the appeal due to lack of subject matter jurisdiction. The final date for submitting written arguments was December 15, 2009.

Solely for the purpose of ruling on the motion and as reflected in the Findings of Fact, the Commission has liberally construed any information set forth in the Appellant's submissions. The format of the Commission's decision is prescribed, in part, by Sec. 227.47(1), Stats.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. Appellant was employed in the Public Works Department of the Village of Camp Douglas (Respondent).
2. Respondent terminated Appellant's employment on October 8, 2009.
3. Appellant submitted a letter of appeal to the Commission to review "the determination of discharge under Wisconsin Statute § 230.44(1)(c)." The appeal was received by the Commission on November 2, 2009.

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Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. Appellant has the burden of establishing that the Commission has subject matter jurisdiction over his appeal.
2. Based on the uncontested facts drawn from a liberal reading of Appellant's written submissions, Appellant has failed to sustain that burden.
3. The Commission lacks subject matter jurisdiction over this appeal.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

ORDER¹

Respondent's motion is granted and this appeal is dismissed for lack of subject matter jurisdiction.

Given under our hands and seal at the City of Madison, Wisconsin, this 26th day of February, 2010.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

¹ Upon issuance of this Order, the accompanying letter of transmittal will contain the names and addresses of the parties to this proceeding and notices to the parties concerning their rehearing and judicial review rights. The contents of that letter are hereby incorporated by reference as a part of this Order.

Village of Camp Douglas (Lyddy)

MEMORANDUM ACCOMPANYING ORDER DISMISSING APPEAL

Respondent has moved the Commission to dismiss the appeal for lack of subject matter jurisdiction. The issue is whether the Commission has the authority to decide an appeal contesting the termination of Mr. Lyddy's employment as a village employee.

The Appellant has the burden of establishing that the Commission has subject matter jurisdiction over his appeal. WISCONSIN DEPARTMENT OF CORRECTIONS (GARCIA), DEC. No. 32890 (WERC 10/26/2009). To meet that burden, Appellant must show that his appeal falls within the scope of the Commission's jurisdiction as established by the legislature when it enacted Sec. 230.44(1), Stats. and 230.45(1), Stats. The Commission does not have the authority to exceed the jurisdictional limits placed on it by these statutes.

As noted by the Appellant in his letter of appeal, the Commission's jurisdiction to consider appeals related to termination is found in Sec. 230.44(1)(c), Stats.:

(c) *Demotion, layoff, suspension or discharge.* If an employee has permanent status in class, or an employee has served with the state as an assistant district attorney for a continuous period of 12 months or more, the employee may appeal a demotion, layoff, suspension, discharge or reduction in base pay to the commission, if the appeal alleges that the decision was not based on just cause.

Implicit in all of Chapter 230 is that it applies only to State employees. The title of the chapter is called "State Employment Relations." Subchapter 2 relates to the State's "Civil Service" and contains Sec. 230.44(1), Stats., the purported jurisdictional basis for this appeal. Nowhere in the chapter is any evidence that its provisions apply to village employees. Indeed, the subchapter is devoted to the technicalities of the State's classified civil service, including recruitment, compensation, workweek and office hours and other details of state employment that clearly do not apply to village employees. Further, Appellant ignores the fact that Chapter 230's definition of "agency" specifically excludes "any local unit of government." Section 230.03(3), Stats. Villages are a quintessential example of a local unit of government. Appellant makes no persuasive argument to demonstrate that the Respondent is not a local unit of government.

In order to bring an appeal pursuant to Sec. 230.44(1)(c), Stats., related to discharge, the Appellant must have been a State employee with "permanent status in class." Appellant cites the first portion of Sec. ER 1.02(10), Wis. Adm. Code, to make the claim that he is a State employee, but he omits the part of the rule that states that he must render services to the State "under an employer/employee relationship in the classified civil service, except where otherwise stated or modified by rule." Appellant provides no facts or authority to demonstrate that he served in the State's classified civil service and there is no reasonable basis for the Commission to read his pleadings so broadly as to include that possibility.

Solidifying our conclusion that Chapter 230 does not apply to village employees is the fact that the legislature created a separate statutory mechanism for villages to develop their own civil service systems. Section 66.0509(1), Stats., states in part that “Any city or village may proceed under s. 61.34 (1), 62.11 (5) or 66.0101 to establish a civil service system of selection, tenure and status, and the system may be made applicable to all municipal personnel....” Adopting Appellant’s broad view of the scope of Chapter 230 would leave Sec. 66.0509(1), Stats., meaningless. In short, there would be no need for the legislature to enact Sec. 66.0509(1), Stats., if village employees were covered under the State’s civil service system.

Finally, the Appellant argues that because he was licensed by the State and worked on State-regulated municipal “waterworks,” he should be considered a state employee. This argument is unpersuasive. Utilizing this same logic, one could argue that any individual licensed by the State and working for a regulated employer would be considered a state employee. For example, a dentist could argue that because she is licensed by the State and her dental office is regulated by the State, that she is a State employee.

Given the absence of any information to the contrary, the Commission must conclude that Mr. Lyddy was not a State employee with “permanent status in class” at the time of his termination. No provision in either Sec. 230.44 or 230.45(1) encompasses his claim. As such, the Commission lacks subject matter jurisdiction to hear this appeal as it relates to his termination from employment with the Respondent.

The appeal must be dismissed for lack of subject matter jurisdiction.

Dated at Madison, Wisconsin this 26th day of February, 2010.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

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