



the issue or issues involved in this appeal, the appellant alleged violations of §16.12(3),(4),(5), Wis. Stats. (1975), with respect to an improperly constituted examining board, failure to fairly determine qualifications, fitness, and ability, and failure to utilize appropriate scientific techniques and procedures in administering the selection process, in rating the results of examination, and in determining the relative ratings of the competitors.

4. The exam in question was a written exam.

#### CONCLUSIONS OF LAW

1. Pursuant to §129(5), Chapter 196, Laws of 1977, this case must be decided under the law as it existed prior to the effective date of Chapter 196, Laws of 1977.

2. A written examination not being subject to the requirements of §16.12(3), Wis. Stats. (1975), no issue with respect to that subsection is properly before the Commission on this appeal.

3. The appellant should be permitted to amend his original appeal letter to raise allegations of violations of §16.12(4) and (5), Wis. Stats. (1976).

#### OPINION

This case raises the question of whether a party appealing a personnel transaction before this Commission can amend an original appeal letter to raise allegations of error as to the transaction in addition to the allegations contained in the original letter. This subject was discussed in a recent Commission decision, Oakley v. Commissioner of Securities, Case No. 78-66-PC (10/10/78), and these comments apply here:

In the Commission's view, parties to personnel appeals should be permitted a good deal of liberality in amending pleadings. It is a general rule of administrative law that pleadings are liberally construed and are not required to meet the standards applicable to pleadings in a court proceeding. See 73 C.J.S. Public Administrative Bodies and Procedures §120., General Electric Co. v. Wis. Empl. Relations Board, 3 Wis. 2d 227, 245 (1958), National Realty & Constr. Co. v. Occupational Safety & Health Review Commission, 489 F.2d 1257, 1264 (D.C. Cir. 1973). Amendments to pleadings are committed to the sound discretion of the agency, see 2 Am. Jur. 2d Administrative Law §374.

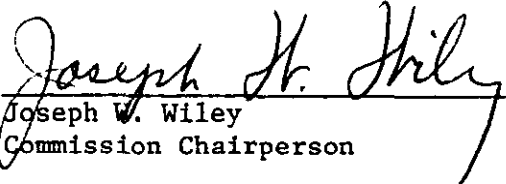
In judicial proceedings in this state the new code of civil procedure permits great liberality in amending pleadings. Pleadings may be amended without leave of court at any time "prior to the entry of the scheduling order," §802.09(1), Wis. Stats., and the amendment relates back to the date of the filing of the original pleading "if the claim asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading, §802.09(3), Wis. Stats. While these provisions do not apply to administrative proceedings, this Commission does not believe any stricter rule is called for in the regulation of proceedings before it.

The appellant's recently raised allegations of error relate to the original transaction appealed and should be permitted, with the exception of the allegation of violation of §16.12(3), Wis. Stats. (1975). In the Commission's opinion the provisions of this subsection do not apply as a matter of law to a written examination and this issue need not be considered by the Commission. The appellant made a number of arguments that the written exam was similar in certain respects to an oral exam and that the requirements of §16.12(3), Wis. Stats. (1975) therefore should apply. However, whether or not these similarities could be proven, the plain language of the statute cannot be ignored. To the extent that the facts alleged about the written exam graders, e.g., lack of impartiality, are relevant and material to the requirements of §16.12(4) and (5), they can be considered in that context.

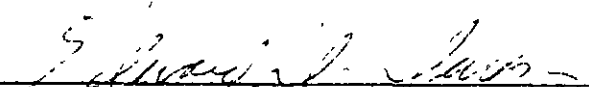
ORDER

The respondent's motion to dismiss contained in their letter of September 20, 1978, is denied. The appeal letter of May 6, 1977, is deemed amended by the appellant's letter of September 14, 1978, with the exception of any allegation of violation of §16.12(3), Wis. Stats. (1975). The "matters asserted" for hearing are as set forth in appellant's September 14, 1978, letter, with the exception of allegations of violation of §16.12(3), which will not be considered by the Commission.

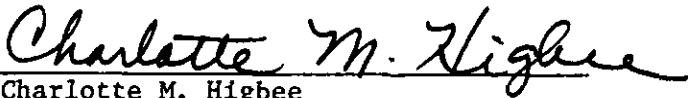
Dated: Oct 27, 1978.

  
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Joseph W. Wiley  
Commission Chairperson

Dated: 7/27, 1978.

  
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Edward D. Durkin  
Commissioner

Dated: Oct. 27, 1978.

  
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Charlotte M. Higbee  
Commissioner