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 REQUEST FOR DECLARATORY RULING *
 *
 Case No. 78-37 *
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DECISION

In its request for a declaratory ruling, filed with the Personnel Board February 6, 1978, Council 24, AFSCME, WSEU, asked that the Board exercise its jurisdiction under §227.06 Wis. Stats. (1975) to resolve the issue of whether or not an employee who has been reinstated with full back pay and fringe benefits after an unlawful termination is entitled to the following:

- (1) reimbursement for medical expense incurred prior to reinstatement when those costs would otherwise have been covered by the applicable health care insurance which would have been afforded the individual as a State employee
- (2) overtime premium pay which would have been earned if the improper discharge had not taken place
- (3) holiday premium pay for all holidays occurring after the termination and prior to the reinstatement

In response to this request, Donald Percy-Secretary, Department of Health and Social Services, and Verne Knoll-Deputy Director, State Bureau of Personnel-have asserted that the Board does not have jurisdiction to issue the requested declaratory ruling. They assert that the Board does not have authority to enforce any Civil Service statute or rule, a prerequisite under §227.06, Stats., that the Board cannot interpret or construe any statutes as requested by Council 24, and that the council is not an interested party who is entitled to request a ruling.

In the opinion of the Commission, these assertions regarding the purported lack of jurisdiction are unpersuasive. First of all, the

Commission does have the authority to enforce the Civil Service statutes, under the provisions of §230.45 Wis. Stats. (1977) and the statutes cited therein whereby this Commission is directed to review the termination of certain state employees and to direct reinstatement of those employees where proper. Inherent in this authority is the responsibility to insure that the reinstatements are directed in such a manner that other statutes such as §230.43(4) pertaining to back pay are also properly enforced. Furthermore, it is clear that the Commission has the authority to enforce statutes which specifically deal with the subject matter which encompasses the topic of this request. Consequently, it cannot be said that jurisdiction is precluded either because of a lack of authority to enforce State Civil Service statutes in general or because of a lack of authority to enforce statutes which are specifically related to the topic of this request.

Second, the respondents have asserted that jurisdiction under §227.06(1) is limited to a declaration that a particular statute is "applicable" to a specific person or situation and does not include declarations which interpret or otherwise construe a statute. However, the act of interpreting or construing a statute would seem to be inherent in the process of determining its applicability to varying sets of facts. The Wisconsin Supreme Court expressed a similar view in Wisconsin Fertilizer Asso. v. Karns, 39 Wis. 2d 95, 158 N.W. 2d 294 (1968) when it stated that the question of whether a statute applies to a specific set of facts "is a question which involves the construction, interpretation, and application of the statutory language." Wisconsin Fertilizer at 102.

Finally, the respondents have asserted that jurisdiction is lacking because Council 24 does not qualify as an interested party for whom the Commission could make a ruling under §227.06. While it is correct that employees represented by the union would normally have any appeal rights through the contract grievance procedure, this is not always the case. See Request for Declaratory Ruling, Wisconsin Personnel Board No. 75-206, August 26, 1976. The union has sufficient interest to invoke §227.06.

The respondents have argued in the alternative that the Commission not exercise its jurisdiction even if it finds that such jurisdiction is present. It is clear from the wording of the statute and from the language in Wisconsin Fertilizer, supra, that §227.06 jurisdiction is discretionary in nature. Thus the Commission is not compelled to grant the union's request for a declaratory ruling.

The respondent's position is based on the change in the civil service law, Chapter 196, Laws of 1977, that has eliminated the "reinstate fully" language contained in the old §16.05(1)(e), Wis. Stats. (1975). However, it is entirely possible that under the new statutory language, "the Commission shall either affirm, modify, or reject the action which is the subject of the appeal," §230.44(4)(c), Wis. Stats. (1977), the Commission may order the full reinstatement of a discharged employee who was successful on appeal. For such cases, it would be helpful to have a ruling on the extent of such reinstatement. In the Commission's opinion this is an appropriate case to issue a declaratory ruling.

ORDER

The respondent's objections to jurisdiction are overruled. The parties are directed to serve and file briefs on the merits pursuant to the following schedule:

Petitioner: September 25, 1978.
Respondents: October 24, 1978.
Reply (if any): October 31, 1978

Dated: August 29, 1978.

Joseph W. Wiley
Joseph W. Wiley
Chairperson

Dated: August 29, 1978.

Edward D. Durkin
Edward D. Durkin
Commissioner

Dated: August 29, 1978.

Charlotte M. Higbee
Charlotte M. Higbee
Commissioner