

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *

ROBERT N. NIGBOR,
 Appellant,

v.
 Secretary, DEPARTMENT OF
 VETRANS AFFAIRS,
 Respondent.

Case No. 79-125-PC

* * * * *

INTERIM
DECISION

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(d), Stats., of an appointment. At the prehearing conference it was determined that the appellant through his representative would file a bill of particulars. This was filed but the respondent objected to its adequacy. Another document was filed by the appellant and the respondent then filed a motion requesting postponement of the hearing that had been scheduled or dismissal of the appeal. The hearing was postponed pending disposition of this motion.

OPINION

A good deal of the difficulty in this case stems from the fact that there were three letters sent to the Commission complaining about the transaction in question, one from the local president, one from the local vice-president, and one from Mr. Nigbor, who was the applicant who was turned down for the job. See letters from Handrich and Picard, filed April 27, 1979, and Nigbor, filed May 2, 1979.

Without going in to great detail, Mr. Handrich cited a question and

a comment made during the job interview related to union affiliation and the 1977 WSEU strike. It was alleged that two applicants (Nigbor and Wilson) were turned down for the job because they had gone out on strike, while Schultz was appointed because he had not. It was alleged that this constituted discrimination and "undermining of union membership."

Mr. Picard complained about "personal" questions being asked during the interview but stated that the one question upon which he was basing the complaint was one related to union affiliation. He then mentions that both Nigbor and Wilson were passed over for the job because they were out on strike in 1977.

In Mr. Nigbor's letter he complains about the oral interview not pertaining to the job and being an invasion of privacy, and then quotes a number of questions including one about union affiliation. He then complains about the lack of a private setting for the interview, and details how he was better qualified than the man who was hired.

In the first document submitted by appellant's representative as a bill of particulars, letter dated August 24, 1979, it is alleged, in part, as follows:

"During the process of filling the vacancy of fire fighter 1 at the Wisconsin Veterans Home, the appellants allege the employer illegally abused their powers of discretion. Further, the appellants allege the employer violated the following state statutes: Sec. 230.05; 230.06; 230.08; 230.09; 230.14; 230.15; 230.16; 230.18; 230.20; 230.25; 230.41; 111.31 to 111.37 and finally, Art. XI, Sec. 1 of the agreement between AFSCME Council 24, Wisconsin State Employees Union and the State of Wisconsin."

The letter went on to state that the relief requested was the appointment of Mr. Nigbor with back pay and to request that the appeals

of Nigbor, Picard, and Handrich be joined for hearing.

A subsequent letter from Mr. Nigbor's representative dated October 2, 1979, states that the August 24, 1979, letter combined with the appeal letters and supporting documentation constitute an adequate response to the requirement to submit a bill of particulars.

It is a familiar principle that in administrative proceedings pleadings are liberally construed and are not subject to the strict rules applicable to pleadings in judicial proceedings. See, e.g., 73 C.J.S. Public Administrative Bodies and Procedures §120. General Electric v. Wis. Empl. Relations Bd., 3 Wis. 2d 227, 245 (1958).

In proceedings before the Commission, the legislature has mandated only that appeals be in writing, see §230.44(2), Stats., and the current rules are to the same effect, see §PB 1.01(1), Wis. Adm. Code:

"Form. Appeals shall be in writing and need not conform to any technical requirements, but should, where possible, contain the information set forth in PB 1.01(2), below."

Amendments to pleadings are permitted liberally. See Oakley v. Commission of Securities, 78-66-PC (10/10/78).

Nonetheless, the parties to administrative proceedings are entitled to reasonable notice in advance of hearing, see Wisconsin Telephone Co. v. DILHR, 68 Wis. 2d 345, 354-360, 228 NW 2d 649 (1975). Also, the parties to proceedings before the Commission do have the right to discovery. See §PB 2.02, Wis. Adm. Code. In an administrative proceeding such as this, certainly the goal should be to avoid a technical approach while providing fair notice of what is in issue.

In this case the three letters are clear and specific enough in themselves. The problem with respect to notice stems from their

interrelationship with each other and with the conclusory allegations of the August 24th letter. For example, both Picard and Handrich alleged that one of the reasons Nigbor was passed over was because he did not work during the strike. Mr. Nigbor did not mention this in his letter. It could be significant to the respondent to know whether this will be a point of contention for hearing.

In order to provide clearer notice of what is in issue here the appellant's representative should submit a letter to the Commission setting forth which of the factual allegations set forth in the initial three letters, or which additional facts, if any, are alleged to constitute or which provide the basis for the allegation of illegal action or abuse of discretion under §230.44(1)(d), Stats. If there are other statutory violations seen by the appellant, it should be indicated which factual allegations relate to which violations.

The Commission wishes to reemphasize its opinion that pleading practice in Commission proceedings must be handled in an informal, non-technical, and pragmatic manner, and appeal letters and other pleadings must be liberally construed. These considerations of course are subject to the statutory requirements of Chapter 227 that the parties be given notice prior to hearing of the issues on matters associated, but this can and should be accomplished in a straightforward manner. The appellant need only state the facts which form the basis of the appeal, (i.e., what happened or didn't happen), the reasons why the appellant feels that it was improper (it is not necessary to specify the sections of the statutes or administrative code allegedly violated)

and the relief or remedy sought. If there is ambiguity or a lack of clarity in an appeal due to factors such as overlapping and possibly conflicting documents, this should be able to be resolved in a relatively straightforward manner.

ORDER

The respondent's motion to dismiss is denied. The appellant's representative is to submit a letter as set forth above within three weeks of the date of this Order.

Dated: Nov. 4, 1979. STATE PERSONNEL COMMISSION

Charlotte M. Higbee
Charlotte M. Higbee
Commissioner

AJT:jmg

11/14/79