

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *
RICHARD L. WECH,
Appellant,
v.
SECRETARY, DEPARTMENT OF HEALTH
AND SOCIAL SERVICES,
Respondent.
Case No. 79-310-PC
* * * * *

INTERIM
DECISION
AND
ORDER

NATURE OF THE CASE

The appellant filed with the Commission on November 6, 1979, a letter indicating that he had been promoted and that he had been informed that the effective date of the promotion had been changed from October 21, 1979, to November 1, 1979. Attached to this letter was an "Employee Contract Grievance" form which showed a date of submission at the second step of October 19, 1979, and alleged a violation of Articles III and XI, section 1, of the contract.

At the prehearing conference held December 5, 1979, it was indicated that there is a contract grievance pending relating to the same subject matter which had been denied at the third step as non-grievable. The appellant subsequently indicated that he wished to pursue this matter with the Commission. The respondent objects to the Commission's subject matter jurisdiction.

FINDINGS OF FACT

The facts necessary to a decision on jurisdiction are summarized adequately above and will be utilized as the findings with respect to the

objection to subject matter jurisdiction.

CONCLUSIONS OF LAW

1. The Commission does not have jurisdiction over appeals of state employe contract grievances.

2. The appellant's letter received November 6, 1979, appropriately may be construed as an appeal of the effective date of his promotion pursuant to s. 230.44(1)(d), Stats.

3. The Commission has jurisdiction over the subject matter of this appeal pursuant to s. 230.44(1)(d), Stats.

OPINION

The respondent argues as follows, see letter dated December 21, 1979:

"The appellant comes before the Commission on appeal from the denial of a contract grievance. The appellant . . . has designated this appeal as a grievance of Articles III and XI, section 1, of the bargaining agreement . . . so long as the appellant is alleging a contract violation, his right to appeal is to arbitration, he is absolutely barred from taking an appeal to the Personnel Commission . . . So long as the appellant has consistently designated this grievance under specific provisions of an existing contract, the Commission has no jurisdiction to hear his appeal."

It is not clear what possible contractual violation could be alleged here since the effective date of a promotion is a prohibited subject of bargaining, see s.111.91(2)(b)1., Stats., and could not be covered by a collective bargaining agreement. On the other hand, there does not appear to be any reason why the setting of the effective date of the promotion would not be appealable under s.230.44(1)(d), Stats:

"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 may be appealed to the Commission."

In administrative proceedings such as these, parties should be permitted a good deal of liberality in amending pleadings and pleadings should be liberally construed. See 73 C.J.S. Public Administrative Bodies and Procedures s.120; General Electric Co. v. Wisl. Empl. Relations Bd., 3 Wis. 2d 227, 245, (1958); National Realty and Const. Co. v. Occupational Safety and Health Review Commn., 489F.2d 1257, 1264, (D.C. Cir. 1973); Oakley v. Commr. of Securities, Wis. Pers. Commn. No. 78-66-PC (10/10/78).

The Commission will interpret the appellant's letter filed November 6, 1979, as an appeal to the Commission pursuant to s.230.44(1)(d), Stats., of the effective date of the promotion.

ORDER

The respondent's objection to subject matter jurisdiction is overruled.

Dated Jan. 14, 1980

STATE PERSONNEL COMMISSION

Charlotte M. Higbee
Charlotte M. Higbee
Commissioner