

STATE OF WISCONSIN

PERSONNEL COMMISSION

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JAMES W. SCURLOCK,
 Appellant,

v.

DEPARTMENT OF INDUSTRY, LABOR,
 AND HUMAN RELATIONS.
 Respondent.

Case No. 79-44-PC

* * * * *

DECISION
AND
ORDER

NATURE OF CASE

Appellant has filed an appeal of the denial of a grievance regarding the physical location of his office which he feels inhibits and precludes the proper performance of his duties.

TENTATIVE ISSUES

Is §949.16, Wis. Stats., being violated?

- (a) Does the statute require preservation of confidentiality?
- (b) Is office set-up of Crime Victim Compensation Bureau such that it precludes preservation of that confidentiality?

MOTION TO BE DETERMINED BY THIS DECISION

Does the Commission have jurisdiction to hear this appeal and make a ruling on the above issues under §230.45?

FACTS

1. Appellant filed a grievance on January 18, 1979, which reads as follows:

"The physical location of my office (and of the other two Crime Victim Compensation Bureau's staff members) inhibits and precludes the proper performance of my duties. The nature of my (our) work involves sensitive and legally confidential information, but the office(s) location(s) prevents any control of said information. Any conversation be it an interview, telephone conversation, or dictation can readily be heard by anyone who may be in the W.C. reception area. Thus any verbal communication regarding sexual assault cases, cases involving juvenile assailants, or any other confidential information, can be heard by unauthorized persons including the general public that may be present.

Additionally, such an environment will obviously have a 'chilling' effect upon any crime victim that may wish to come to the Bureau to file a claim or provide requested information or documentation." (Commission's Exhibit # 2)

2. The relief sought was to relocate or reconstruct the offices to insure the proper control of sensitive and/or confidential information.

3. The employer's decision was to review the grievance by management and tell the appellant of the solution. That answer was forwarded to appellant on February 9, 1979. The answer pertinent to this appeal is:

"The physical location of your office, as well as other offices, within the Division suggests that legal and confidential information or discussions be treated accordingly. To the extent that your office does not provide confidentiality, Mr. Benkert has made his office available. Additionally, at least one of four attorney's offices will also be available for you to dictate, discuss and/or have phone conversations regarding sensitive and legally confidential matters.

Finally, the out come of the 'internal audit,' although this is not one of its specific objectives, may offer additional solutions." (Commission's Exhibit # 3)

4. The appellant submitted his appeal to the Commission on February 9, 1979, in which the second paragraph is pertinent to this motion. It reads as follows:

"I submit my request based on the belief that the Crime Victim Compensation Bureau is in violation of the intent of §949.16, Wis. Stats. Specifically, it is my opinion that the Bureau is obligated by said statute to perpetuate the confidentiality of secured information previously classified as being confidential. I assert that the

physical location(s) of the Bureau preclude honoring this obligation for it prevents any control of said information."

5. A prehearing conference was held before Commissioner Higbee of the State Personnel Commission on March 27, 1979, and the parties agreed to a briefing schedule on the subject of jurisdiction which was:

Respondent: April 27, 1979
Appellant: May 14, 1979
Respondent: May 21, 1979.

CONCLUSIONS OF LAW

1. The question of jurisdiction in this case is properly before the Personnel Commission.

2. The appellant has the burden of proof on the Motion to Dismiss the tentative issues because of the Commission's lack of jurisdiction.

3. The appellant has not met that burden of proof.

OPINION

This matter is before the Commission as an appeal of a decision on a non-contractual grievance at the third step, pursuant to §230.45(1)(c), Wis. State., (1977). This subsection provides that the Commission shall:

"Serve as final step arbiter in a state employe grievance procedure relating to conditions of employment, subject to rules of the secretary providing the minimum requirements and scope of such grievance procedure."

While no such rules have been promulgated to date, chapter 196, Laws of 1977, §129(4q), provides:

"The rules of the director of the bureau of personnel in the department of administration promulgated under section 16.03, 1975 Stats., shall remain in full force and effect until modified...."

Section Pers. 25.10, WAC, has not been modified and contains the following language:

"...each department shall, as required by the director, establish a written grievance procedure. Such procedure shall meet standards established by the director."

Therefore, in the absence of rules promulgated by the DER secretary, the aforesaid rule of the director, and the grievance procedure standards issued pursuant to the rule, provide the framework for the grievance system. These standards are contained in the Administrative Practices Manual, State of Wisconsin, Department of Administration, Subject: Non-contractual Employee Grievance Procedures, effective 8/24.66, revised 10/1/75. Matters appealable at the fourth step to the board (now Commission) are set forth at §I. D. 1. b.:

"However, only those complaints which allege that an agency had violated, through incorrect interpretation or unfair application:

- 1) a rule of the Director, State Bureau of Personnel or Civil Service Statute....
- 2) a function where the Director of the State Bureau of Personnel has expressly delgated his authority to the appointing officer...may be appealed to the State Personnel Board.

The Commission agrees that the appellant in his grievance appeal and in his appeal to the Commission lends his strongest concern to the problems that are created to users of the provisions of the Crime Victim's Compensation Act, Ch. 949. We laud his professional concern to accomplish his task under the law more proficiently. However, we must agree with the respondent that such an appeal raises no claim that either a rule of the Director of a Civil Service Statute has been violated by such method of operation by DILHR. We must further agree with the respondent that no expressly delegated function of the Director of the State Division of Personnel is involved in this case.

The appellant in this case stresses in his brief the meaning of "conditions of employment." First of all, none of the arguments raised by appellant as to the lack of confidentiality or the "chilling" effect the location of the office presents to potential victims of crimes can possibly be valid since those victims are not appealing as state employees and therefore, are not subject to any provisions of the State Personnel Commission. Our only authority is based upon the rights of state employees, not the citizens at large.

Going to the appellant's side of the coin, his thrust is that it "precludes the proper performance of his job responsibilities under Chapter 949.16." For sake of argument, the Commission could easily agree with his contention, yet we would still have to rule we do not have jurisdiction since the context appellant raises job performance puts it squarely in the policy department of his employer. If the employer is satisfied with the job performance, then the Personnel Commission clearly has no right or authority to interfere or intercede with that kind of policy decision.

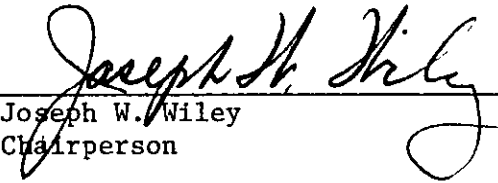
Finally, "conditions of employment" is a word of art not found in Websters or any other dictionary. The correct meaning can be best found in decisions by the National Labor Relations Commission and agencies such as the Wisconsin Employment Relations Commission. While some "conditions of employment" are well defined and in general agreement, others are not. However, it is clear some work conditions are not "conditions of employment" and unless appellant could prove how his desk location had a definite adverse effect on himself, such location is not a "condition of employment"

ORDER

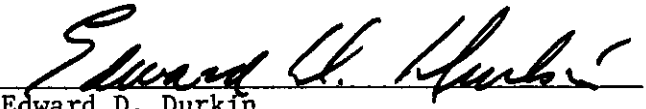
The Commission lacks jurisdiction in this case and, therefore, appellant's appeal and the tentative issues raised in the prehearing conference of March 27, 1979, are hereby dismissed.

Dated: June 12, 1979

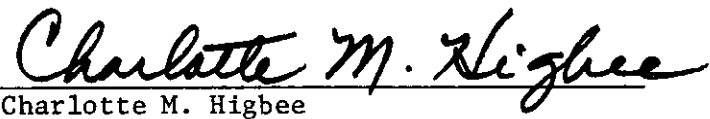
STATE PERSONNEL COMMISSION



Joseph W. Wiley
Chairperson



Edward D. Durkin
Commissioner



Charlotte M. Higbee
Commissioner

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