

STATE OF WISCONSIN

PERSONNEL COMMISSION

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JUDITH SAVIANO, et al,

Appellant,

v.

Administrator, DIVISION OF
PERSONNEL,

Respondent.

Case No. 79-PC-CS-335

* * * * *

INTERIM
ORDER

NATURE OF THE CASE

Appellants filed a Notice of Motion and Motion with the Personnel Commission on February 22, 1980, serving notice that on February 28, 1980, the Wisconsin State Employees Union (WSEU), Dan Roberts, and all other state employes who have appealed reallocation actions taken as a result of the clerical survey, would move the Commission for an order

- 1) rescinding the Department of Employment Relations (DER) bulletin of February 18, 1980, (copy attached)
- 2) allowing Dan Roberts and/or his designees to investigate these appeals per the authority contained in Basinas v. DHSS 77-121 (5/78, 6/78).

The motion was argued before Charlotte M. Higbee, Commissioner, on February 28, 1980. Commissioner Donald R. Murphy has reviewed the file and listened to the tape recording of the oral arguments.

OPINION

Section 230.45 Stats set forth the powers and duties of the Personnel Commission:

§230.45 POWERS AND DUTIES OF PERSONNEL COMMISSION. (1) The Commission shall:

- (a) Conduct hearings on appeals under §230.44.
- (b) Receive and process complaints of discrimination under §111.33(2).
- (c) 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.
- (d) Hear appeals under §230.36(4).
- (e) Hear appeals, when authorized under county merit system rules under §49.50, from any interested party.
- (f) Review and act on decisions of impartial hearing officers under §111.91(3).
- (h) Keep minutes of its own proceedings and other official actions. All such records shall, subject to reasonable rules, be open to public inspection. Records of the administrator which are confidential shall be kept confidential by the commission.
- (i) Adopt rules necessary to carry out this section. Notice of the contents of such rules and amendments thereto shall be given promptly to the administrator and appointing authorities affected thereby.

The Wisconsin Supreme Court has held in Racine Fire and Police Commission v. Stanfield, 70 Wis. 2d 395, 399, 234 NW 2d 307 (1975), as follows:

"It is the general rule that an agency or board created by the legislature has only those powers which are either expressly conferred or which are, by necessity, to be implied from the four corners of the statute under which it operates. State ex rel. Farrell v. Schubert (1971), 52 Wis. 2d 351, 190 NW 2d 529; Ford v. Wisconsin Real Estate Examining Board (1970), 48 Wis. 2d 91, 179 NW 2d 786; American Brass Co. v. State Board of Health (1944), 245 Wis. 440, 15 NW 2d 27. The effect of this rule has generally been that such statutes are strictly construed to preclude the exercise of a power which is not expressly granted. See: 3 Sutherland, Statutory Construction (4th ed.) p. 150, sec. 65.02."

Based on this well-established principle, the Commission concludes that it has no authority to order the rescission of the DER bulletin; there is no statute or administrative rule that confers such authority

upon the Commission, nor can it be implied from the four corners of §230.45 stats.

Subsequent to the filing of the motion on April 1, 1980, the new rules of the Personnel Commission became effective. PC 1.01(4) of the Wisconsin Administrative Code (WAC) provides:

"(4) PAY STATUS OF STATE EMPLOYE AGENTS AND INTERVIEWEES.
A party or party's representative shall be permitted to interview parties and potential witnesses during regular working hours upon reasonable notice and for reasonable periods of time without loss of salary."

This rule may be invoked by appellants in particular cases in much the same manner as a similar issue was raised in the Interim Decision of the Hearing Examiner in Basinas v. Secretary, DHSS, Case No. 77-121, May 8, 1978. However, the new Personnel Commission rule in no way confers upon the Commission the broad-based authority to set aside the general policy of another agency.

As to the second facet of the appellant's motion there was testimony under oath during the oral arguments that on February 15, 1980, Dan Roberts, WSEU, was advised by the Department of Transportation (DOT) that he could not proceed with employe interviews, which he had scheduled previously, during regular working hours. However, there was no evidence in the record nor any allegation which showed a connection between the appellant and these factual assertions, which only dealt with DOT, and not the agency of the appellant. The appellant has failed to establish that she has standing to have the subject matter of the motion considered for action by the Personnel Commission.

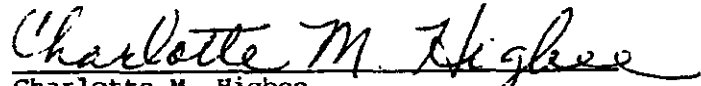
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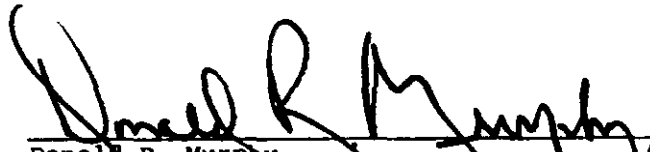
ORDER

The appellant's motion is denied in both its aspects.

Dated: April 7, 1980.

STATE PERSONNEL COMMISSION


Charlotte M. Higbee
Commissioner


Donald R. Murphy
Commissioner

CMH:jmg