

STATE OF WISCONSIN

PERSONNEL COMMISSION

 FRANK SCHLEICHER,
 Appellant,
 v.
 President, UNIVERSITY OF
 WISCONSIN,
 Respondent.
 Case No. 80-123-PC

ORIGINAL

DECISION
 AND
 ORDER

NATURE OF THE CASE

This matter is before the Commission on respondent's motion to dismiss for lack of subject matter jurisdiction.

OPINION

It appears to be undisputed from the papers filed with the Commission that this appeal concerns the manner in which a vacancy in a Business Analyst position was filled by the respondent, and that this was an academic staff position.

Section 230.08, Stats., provides in part as follows:

"(1) CLASSES. The civil service is divided into the unclassified service and the classified service.

(2) UNCLASSIFIED SERVICE. The unclassified service comprises positions held by:

(d) All faculty and academic staff, as defined in s. 36.05(1) and (8), in the University of Wisconsin System.

(3) CLASSIFIED SERVICE. (a) The classified service comprises all positions not included in the unclassified service."

Section 230.06(1) provides in part:

"An appointing authority shall:

* * *

(b) Appoint persons to...the classified service...
subject to this subchapter and the rules prescribed
thereunder." (emphasis supplied)

Section 230.15 provides in part:

"(1) Appointments to...the classified service, shall be made
only according to merit and fitness, which shall be ascertained
so far as practicable by competitive examination...

* * *

(3) No person shall be appointed...in the classified service
in any manner or by any means; except as provided in this sub-
chapter." (emphasis supplied)

Section 230.16(4) provides in part:

"All examinations including minimum training and experience
requirements, for positions in the classified service shall be job-
related in compliance with appropriate validation standards and
shall be subject to the approval of the administrator..."
(emphasis supplied)

Section 230.01(2) provides in part:

"It is the policy of the state and the responsibility of
the secretary and the administrator to maintain a system of
personnel management which fills positions in the classified
service through methods which apply the merit principle, with
adequate civil service safeguards." (emphasis supplied)

The requirements for the examination and appointment processes set forth
in subchapter II of chapter 230, and the authority of the administrator of the
Division of Personnel, apply only to positions in the classified service.

To the extent that this appeal relates to an examination process in-
volved in filling this position, any possible appeal to this Commission would
be under s.230.44(1)(a) or (b), as an appeal of an action or decision of the
administrator, effected directly or on a delegated basis. Since the admini-
strator only has responsibility for examinations for positions in the classi-
fied service, there could not have been any appealable action or decision by

or for the administrator on a delegated basis, with respect to this academic staff position in the unclassified service.

Therefore, there is no basis for an appeal to the Commission pursuant to s.230.44(1)(a) or (b). There also is no basis for an appeal pursuant to s.230.44(1)(d) of "A personnel action after certification which is related to the hiring process in the classified service and which is alleged to be illegal or on abuse of discretion," (emphasis supplied) because in this case the hiring process was in the unclassified service.

The appellant in his arguments in opposition to the motion to dismiss refers to various powers of the "Personnel Commission" pursuant to s.230.07, including the power to investigate. However, section 230.07 has to do with the duties of the Personnel Board, not this Commission, which is an entirely separate agency. See ss. 230.07, 230.44, 230.45, 15.06(1)(d), 15.77, 15.771, 15.80, 15.801.

ORDER

This appeal is dismissed for lack of subject matter jurisdiction.

Dated Sept. 29, 1980

STATE PERSONNEL COMMISSION


Charlotte M. Higbee, Chairperson


Donald R. Murphy, Commissioner


Gordon H. Brehm, Commissioner

AJT:mgd

Parties:

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