



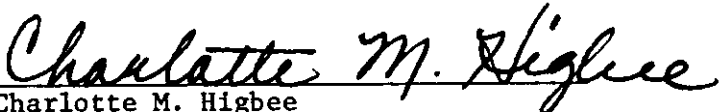
deal of leeway in amending appeals, that some of the underlying facts relating to jurisdiction appear to be in dispute, and that the appellant is unrepresented, it is the opinion of the Commission that the petition for rehearing should be granted and a hearing held at which the facts relating to jurisdiction can be established. It should be emphasized that this hearing is not to be a hearing on the merits of the appellant's complaints against the respondent, but rather a hearing to establish the nature and dates of the personnel transactions that are alleged in the appellant's September 1, 1980, letter, including the question of whether the grievance procedures were followed. It also should be emphasized that this Commission only has jurisdiction over those matters set forth in §§230.44 and 230.45, Stats., and then only when a timely appeal is filed.

ORDER

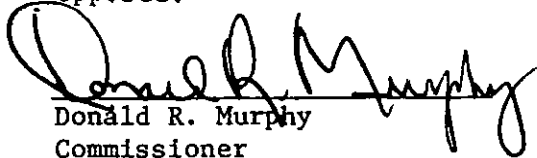
The appellant's request for rehearing dated September 1, 1980, is granted, and the decision and order dated August 19, 1980, is vacated pending an evidentiary hearing on the question of whether the Commission has jurisdiction over this appeal.

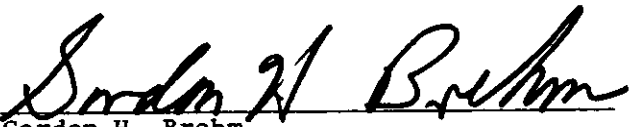
Dated Sept. 26, 1980

STATE PERSONNEL COMMISSION

  
Charlotte M. Higbee  
Chairperson

Opposed:

  
Donald R. Murphy  
Commissioner

  
Gordon H. Brehm  
Commissioner



"I believe the failure to meet the conditions agreed upon in January of 1979 is an abuse of discretionary management authority. This abuse has resulted in my loss of promotional opportunity. It has also resulted in denying full payment for the level of service I provided the department in 1979."

The appellant further complained of an alleged illegal reorganization conducted by the Bureau of Program Management in January of 1979 which allegedly caused his disqualification for reallocation consideration in connection with a statewide personnel survey on data processing positions:

I believe conducting an illegal reorganization within the Department of Administration is an abuse of discretionary management authority. This abuse has resulted in my loss of a promotional opportunity through reallocation.

The memo further stated, in part, as follows:

Mr. Christenson also told me that the position description agreed to and signed by both Gail Swanson and myself was invalid. In an effort to correct this situation I met with Gail Swanson, and personnel officers Tom Herman and Sue Steinmetz in December of 1979. At that meeting a planned reorganization of the Bureau of Information Development was explained to me. The proposed reorganization eliminated my acting position and created a special projects position at one step above my current level. I was told at this meeting there would be an immediate recruitment for the special projects position as part of reorganization implementation and that I would have an opportunity to compete for that vacancy. On January 10, 1980, Gail Swanson informed me that the special projects position would be filled on an internal transfer and there would be no advancement opportunities available. I believe the failure to carry out the management commitments made to me is an abuse of discretionary management authority. This abuse has resulted in another loss of promotional opportunity.

The respondent argues that the letter of February 6, 1980, to Secretary Linder "was not a grievance per se, but rather an appeal of unfair treatment. Mr. Smith ... did not follow the procedures for filing a non-contractual grievance." Thus, his letter cannot be considered a grievance letter from Ruth Hable dated July 7, 1980.

Laying to one side the question of whether the appellant followed the correct procedure with respect to pursuing a non-contractual grievance, the more overriding question is whether any of the matters set forth in the appellant's letter of February 6, 1980, could be appealed to the Commission, at the fourth step, in any event.

In the recent Circuit Court decision of DOT v. Wisconsin Personnel Commission (Kennel, Brauer, and Murphy), No. 79-CV1312 (7/21/80), the Court held that the Commission could only hear such appeals when they involved actual violations of civil service statutes or administrative code rules.

Therefore, to determine whether there possibly might be jurisdiction over this appeal as a fourth step grievance appeal, again laying to one side the question of whether the appellant followed the correct procedures, the Commission must analyze the appellant's February 6th letter to Secretary Lindner to determine if the allegations, if proven, might constitute an actual violation of the civil service statutes or rules.

The second paragraph on page 1 of the February 6th letter refers to a decision to abolish and not to recruit for, a position. It is alleged that this was "an abuse of discretionary management authority." Such an allegation is an insufficient basis for Commission jurisdiction pursuant to the Circuit Court decision cited above. Furthermore, the Commission cannot ascertain any civil service statute or rule that would be violated if an "abuse of discretionary management authority" <sup>were proven.</sup> ^ The closest possibly relevant statute is s.230.44(1)(d), which provides that:

"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."

However, here there was no certification, there was no personnel action after certification, and this subsection is inapplicable.

The same comments apply to the decision to fill the special projects position on a transfer, rather than competitive basis, as set forth in paragraph 2 of page 2 of the February 6th letter.

With respect to the alleged illegal reorganization and alleged resulting denial of reallocation opportunity as set forth in the third paragraph on page 1 and the first paragraph of page 2, while there are certain requirements for reorganizations, e.g., see s.15.02(4), stats., there are no provisions in the civil service statutes (Subchapter II, Chapter 230) or administrative code rules (chapter PERS, Wis. Adm. Code) governing reorganizations. Therefore, the Commission could not have jurisdiction over this aspect of this appeal.

ORDER

This appeal is dismissed for lack of jurisdiction, and the hearing that had been scheduled pending a ruling on jurisdiction is cancelled.

Dated \_\_\_\_\_, 1980

STATE PERSONNEL COMMISSION

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Charlotte M. Higbee  
Chairperson

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Donald R. Murphy  
Commissioner

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Gordon H. Brehm  
Commissioner

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