

STATE OF WISCONSIN

PERSONNEL COMMISSION

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NORMA BRIGGS,

Appellant,

Secretary, DEPARTMENT OF
LABOR, INDUSTRY AND
HUMAN RELATIONS,

Respondent.

Case Nos. 81-172-PC,
81-445-PC, 81-330-PC, and
81-352-PC

* * * * *

INTERIM
DECISION
AND
ORDER

These matters are before the Commission pursuant to §.230.45(1)(c), Wis. Stats., as the final step in a state employe grievance procedure. At the prehearing conference, respondent raised a jurisdictional objection, arguing that the grievances appealed from were neither functions of the administrator nor violations of the civil service law and that the appeals should be dismissed. Both parties have filed briefs.

The Commission's jurisdiction over grievances is premised on §230.45(1)(c), Wis. Stats., which requires the Commission to:

(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.

This provision has been interpreted to mean that only those non-contract grievances that involve a violation of civil service law or personnel rule of the Administrator of the Division of Personnel are reviewable by the Commission. Department of Transportation v. Wisconsin Personnel Commission, Dane County Circuit Court, Case No. 79-CV-1312, (7/21/80).

This result is based upon the provisions of the Administrative Practices Manual (APM) which were construed by the court in the DOT case as establishing the minimum requirements and scope of the statewide grievance pro-

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cedure. The APM provisions only permit appeals of

....those complaints which allege that an agency has violated, through incorrect interpretation or unfair application:

- 1) a rule of the [Administrator, Division] of Personnel or Civil Service Statute....

This language is still in force statewide, irrespective of any procedures that may have been adopted by individual agencies.

The instant appeals all arise from reprimands issued to the appellant over the course of a five month period. It is unnecessary, at this point, to explore the factual circumstances underlying each reprimand. However, each reprimand was grieved through the employe grievance procedure.

Appellant argues that issuance of the reprimands violated two statutory provisions and one section of the Wisconsin Administrative Code, thereby justifying the exercise of jurisdiction by the Commission over these appeals. The appellant suggests that the "reprimands were part of a pattern of spurious discipline explicitly and overtly leading to demotion or discharge, and were without just cause," (Appellant's Brief, p. 5) contravening §230.34, Wis. Stats. However, the statute referred to requires that there be just cause for certain specified means of discipline. Reprimands are not specified and the statute must be construed as excluding them from its coverage. Appellant also argues that issuance of at least one of the reprimands was discriminatory because another employe, outside of a protected class, was not disciplined for similar conduct. While the Commission does have jurisdiction over charges of discrimination as provided in §§230.45(1)(b) and 111.33(2), Wis. Stats., it has adopted a separate procedure for processing such complaints. The appellant has

apparently made use of those procedures by filing a discrimination charge with the Commission. However, the existence of jurisdiction over a discrimination complaint has no bearing on the question of jurisdiction over the instant appeal. Appellant's reliance over §111.32, Wis. Stats., for jurisdiction in this matter is inappropriate.

Appellant's third basis for arguing that jurisdiction exists over these appeals is found in § Pers. 24.04(2)(c), Wisconsin Administrative Code. That section prohibits any reprisals against employes for the release of information to the public, as long as the information is neither confidential nor released for the employe's personal gain. In her brief, appellant argues that she:

....had communicated to an employe of the U. S. Equal Opportunity Commission certain information regarding inequitable application by Respondent's agents of the Wisconsin Fair Employment Law. Her communication of that information, although obviously not for personal gain or in violation of confidence, was the subject of concern to her supervisors, who attempted to discourage her from further such communication by means of written and oral representations. They stopped short, however, of actually disciplining her for the release of information; rather, they invented various pretexts for disciplinary action in the form of the reprimands which are here grieved as Commission Cases Nos. 81-330-PC and 81-352-PC by appellant, and in the form of a further written reprimand which Appellant has grieved and will appeal to the Commission.

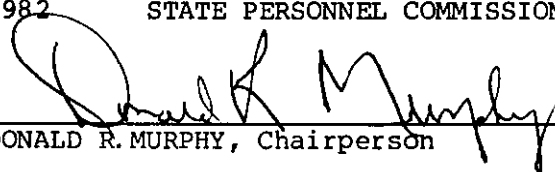
The Commission concludes that the appellant has satisfactorily argued that the three most recent reprimands that have been appealed involve violations of § Pers. 24.04(2)(c), Wisconsin Administrative Code, thereby meeting jurisdictional requirements set out in DQT v. Personnel Commission, supra. No comparable arguments have been raised as to the reprimand that is the subject of Case No. 81-172-PC.

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ORDER

Respondent's Motion to Dismiss is granted as to Case No. 81-172-PC and that appeal is dismissed for lack of subject matter jurisdiction. As to cases 81-330-PC, 81-352-PC and 81-445-PC, respondent's Motion is denied.

Dated: Jan 8, 1982 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson

KMS:jmf

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