

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 WISCONSIN FEDERATION OF \*  
 TEACHERS, \*  
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                   Appellant, \*  
 \*  
 v. \*  
 \*  
 Administrator, DIVISION OF \*  
 MERIT RECRUITMENT AND \*  
 SELECTION, \*  
 \*  
                   Respondent. \*  
 \*  
 Case No. 84-0085-PC \*  
 \*  
 \* \* \* \* \*

INTERIM  
 DECISION  
 AND  
 ORDER

This matter is before the Commission on respondent's motion to dismiss for lack of subject matter jurisdiction. This appeal arises from a letter sent by Michael Berndt, President of the Wisconsin State Attorneys Association, to Susan Christopher, Administrator of the Division of Merit Recruitment and Selection (DMRS). The letter reads as follows:

In May, 1983, an Attorney 12-Project position was created in the Department of Health and Social Services, Division of Corrections; the position was filled on a project appointment basis. Although we have received no information other than the Position Description and Legal Audit Questionnaire, we believe this position is intended to have a duration of two years and that it may be extended for another two years.

In accordance with the Wisconsin Personnel Manual--Staffing, Ch. 248, (July 1983) project positions which have a probable ending date of 18 months or more should be filled as project-permanent rather than project-project.

We are requesting that you audit the actions of the Department of Health and Social Services in filling this position and, if appropriate, order the Department to fill it on a project permanent basis.

In a letter dated May 31, 1984, Ms. Christopher responded:

In response to you May 18, 1984 letter, I have contacted DHSS Personnel to determine the nature of the position referenced above, and how they plan to fill it. The project attorney position, in

the Division of Correction has a projected duration which will not exceed 18 months from the date of appointment. The position will be filled on a project-project basis.

During the 18 month time frame of the project position, DHSS will be reviewing the duties and responsibilities and make a determination on the future status of the position. Assuming a continued need, the position will then be classified and filled on a permanent appointment basis.

DHSS' decision to fill the position on the project-project basis for a duration not to exceed 18 months is acceptable. This does not violate the policy provisions in Chapter 248 of the Wis. Personnel Manual concerning the filling of a project position. (Emphasis added.)

During a prehearing conference held on July 23, 1984, the respondent objected to the Commission's authority to hear the appeal and agreed that there was no decision made by the Administrator of DMRS. In a subsequent brief, respondent contended that the May 31st letter provided appellant with "information as to why the project position in question was to be filled on a project-appointment basis. [The letter] does not contain a decision."

The Commission's authority to review decisions of the Administrator, DMRS is found in §230.44(1)(a), Stats. (as revised by 1983 Wisconsin Act 27), which provides:

Decisions made or delegated by the administrator.  
Appeal of a decision under this subchapter made by the administrator or by an appointing authority under authority delegated by the administrator under §230.05(2).

Among the various provisions in Subch. II of Ch. 230, Stats., relating to project positions and project appointments in §230.27(2), Stats:

The administrator may provide by rule for the selection and appointment of a person to a project position.

The Administrator's rules regarding project appointment are set forth in Ch.

ER-Pers. 34, Wis. Adm. Code.<sup>FN</sup> According to §ER-Pers. 34.03(1), Stats.:

A project position may be filled on a project appointment basis only after approval by the Administrator. Project appointments shall be made so as to contribute to a competent and balanced work force.

This provision indicates that once a project position exists, the Administrator must approve any action to fill the position by a project appointment rather than a permanent appointment. The distinction between the two types of appointment is that the project appointee lacks permanent status in class for civil service purposes.

The Administrator's May 31st letter reflects the Administrator's decision to accept (i.e. approve) the decision (request) by DHSS to fill the project basis by a project appointment. This approval is required under §ER-Pers. 34.04(1), Wis. Adm. Code. It may be that the Administrator had previously approved DHSS' decision to utilize a project appointment. If that is the case, the May 31st letter still served to notify the appellant of the Administrator's decision. Section 230.44(3), Stats. Regardless of whether the approval was granted simultaneous to the letter or sometime earlier, the Administrator's acceptance of the project appointment procedure was a personnel decision under Subch. II of Ch. 230, Stats.

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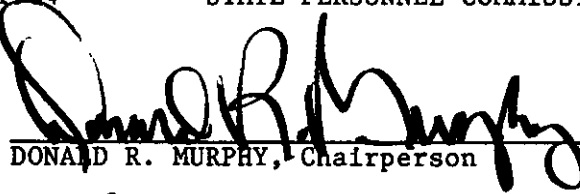
<sup>FN</sup> Those provisions of Ch. ER-Pers. 34, Wis. Adm. Code, relating to classification and compensation matters are considered to be rules of the Secretary of the Department of Employment Relations.

ORDER

Respondent's motion to dismiss is denied.

Dated: Oct. 10, 1984

STATE PERSONNEL COMMISSION

  
DONALD R. MURPHY, Chairperson

  
LAURIE R. McCALLUM, Commissioner

  
DENNIS P. MCGILLIGAN, Commissioner

KMS:ers

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