

No. 86-1449

STATE OF WISCONSIN, IN COURT OF APPEALS
DISTRICT IV

FILED

MICHAEL PEARSON,
Petitioner-Appellant,

MAR 5 1987

CLERK OF COURT OF APPEALS
OF WISCONSIN

v.

PRESIDENT, UNIVERSITY OF WISCONSIN
SYSTEM (MADISON), and WISCONSIN
PERSONNEL COMMISSION, STATE OF
WISCONSIN,

Respondents.

APPEAL from an order of the circuit court for Dane
county: HAROLD LATTON, Judge. Affirmed.

Before Cartzke, P.J., Dykman and Sundby, JJ.

PER CURIAM. Michael Pearson appeals an order affirming a decision of the Wisconsin Personnel Commission. Pearson was a locksmith for the University of Wisconsin. He applied to the University for the position of Maintenance Supervisor 1-Locksmith. His application was denied. The commission found the rejection wrongful and ordered the university to appoint Pearson to the position upon its next vacancy. Pearson contends that the commission should have also awarded him compensation consisting of back pay, a pay raise, and attorney fees. He contends that sec. 230.43(4), Stats., authorizes recovery of compensation, that sec. 230.44(4)(c), Stats., provides for compensation, that past practice of the commission, has allowed a recovery, and that in the absence of an express statutory grant the Wisconsin Constitution and decisions of the Wisconsin Supreme court allow a recovery. Pursuant to a presubmission conference, the appeal has proceeded on an expedited calendar. We reject Pearson's arguments and affirm the order of the trial court.

Section 230.43(4), Stats., applies where an employee has been removed, demoted or reclassified. It does not apply to rejected applications for new positions, since the statute's inclusion of one matter excludes similar matters not mentioned. Teamsters Union Local 695 v. Waukesha County, 57 Wis.2d 62, 67 n.6, 203 N.W.2d 707, 710 n.6 (1973).

Section 230.02, Stats., provides that statutes applicable to the department must be liberally construed to aid the purposes declared in sec. 230.01, Stats. Liberal construction of a statute consists of giving the words a meaning which renders it effectual to accomplish the purpose or fulfill the intent which it plainly discloses. State ex rel. Mueller v. School District Board, 208 Wis. 257, 260, 242 N.W. 574, 575 (1932). Liberal construction does not allow judicial amendment of the statute. Section 230.43(4), Stats., provides for compensation under limited circumstances. An award for other circumstances would exceed the legitimate bounds of liberal construction.

Section 230.44(4)(c), Stats., allows the commission to remand the matter to the person who took the original action. The power to remand does not enlarge the powers that the commission possessed under other parts of the statute.

The commission's decision in Seep v. DHSS, nos. 83-0032-PC and 83-0017-PC-ER (Wis. Pers. Comm. Oct. 10, 1984), does not require a different interpretation of the powers of the commission. Pearson has not provided a copy of the decision. He contends that in it the commission inferred a remedy from the statutes to provide effective relief. We owe no deference to a decision of the commission that construes its own powers. The scope of administrative authority is a question of law for the courts. Board of Regents v. Wisconsin Pers. Comm., 103 Wis.2d 545, 551, 309 N.W.2d 366, 369 (Ct. App. 1981).

Watkins v. LIRC, 117 Wis.2d 753, 763, 345 N.W.2d 482, 487 (1984), held that one purpose of the Fair Employment Act, part of ch. 111, Stats., is to make the victims whole. The Act expressly allowed the department to order such action which would effectuate the purpose of the subchapter. Id. at 757 n.2, 345 N.W.2d at 484 n.2. The power to effectuate the statutory purposes provided a broad grant of implied powers. No similar provision in chapter 230 provides the commission a similar grant of implied powers to effectuate the statutory purposes. The commission must implement the statutory purposes through powers expressly provided by the statute.

Standard Theatres v. Transportation Dept., 118 Wis.2d 730, 349 N.W.2d 661 (1984), held that reasonable attorney fees under sec. 32.28, Stats., included fees incurred for an attorney from outside the locality. The statute in Standard Theatres expressly authorized the recovery of attorney fees. No similar provision in chapter 230 empowers the commission to award attorney fees.

Anderson v. Labor & Industry Rev. Comm., 111 Wis.2d 245, 330 N.W.2d 594 (1983), addressed sec. 111.36(3)(b), Stats., which allowed the department to order such action that would effectuate the purpose of the subchapter. Id. at 247 n.1, 330 N.W.2d at 595 n.1. The Anderson court held that the power to award interest on back pay should exist to accomplish the purpose of the act. Id. at 260, 330 N.W.2d at 601. No similar provision allows the commission to enter any order which would effectuate the purpose of chapter 230. The powers of the commission are more narrowly defined.

Article I, § 9 of the Wisconsin Constitution provides that every person is entitled to a certain remedy in the laws for all injuries and wrongs. This provision confers no legal rights but addresses the right of persons to have access to the courts and to obtain justice on the basis of the law as it exists. Mulder v. Acme-Cleveland Corp., 95 Wis.2d 173, 189, 290 N.W.2d 276, 284 (1980). If an adequate remedy does not exist to resolve disputes or provide due process, the courts may fashion an adequate remedy. Collins v. Eli Lilly Co., 116 Wis.2d 166, 182, 342 N.W.2d 37, 45 (1984). The omission of back pay, a pay raise, and attorney fees in ch. 230 was a legislative choice of available reasonable remedies which preempts the power of the judiciary to fashion an alternative.

By the Court.--Order affirmed.

Not recommended for publication in the official reports.