

KALLEN L. KRAUSE,

Appellant,

v.

Secretary, DEPARTMENT OF
HEALTH AND SOCIAL SERVICES

Respondent.

Case No. 89-0057-PC

INTERIM
DECISION
AND
ORDER

On May 25, 1989, the appellant filed a letter of appeal relating to one or more vacant limited term employment (LTE) positions at the respondent's Lincoln Hills School. Specifically, the appellant contests the requirement that candidates for Youth Counselor LTE positions have prior Youth Counselor experience, a degree in social work, psychology or police science, or have either law enforcement or military service experience. By letter dated June 1, 1989, the appellant was advised that her appeal raised a jurisdictional issue and was provided an opportunity to file arguments.

The Commission has previously ruled that it lacks the authority to review a LTE selection decision. In Barker v. UW, 88-0031-PC, 4/20/88, the Commission stated:

The statutory basis typically used for commission review of selection decisions is §230.44(1)(d), Stats. That provision reads:

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.

As noted in §ER-Pers 10.04, Wis. Adm. Code, the procedures used for recruitment and selection of limited term employes may be a modification of the recruitment and selection process used for permanent positions. In Kawczynski v. DOT, 80-181-PC, 11/4/80, the Commission held that §230.44(1)(d), Stats., does not apply to a selection of a limited term employe because there is no certification for a limited term vacancy. Even though subsequent decisions have concluded that the phrase "after certification" in §230.44(1)(d), Stats., refers to a certain segment of the appoint-

ment process and does not require an actual certification, the limited term appointment process does not include a segment that is comparable to a certification of eligibles.

According to §ER-Pers 10.04(2), Wis. Adm. Code, LTE recruitment and selection procedures must be approved by the administrator of the Division of Merit Recruitment and Selection:


(2) In order to safeguard the public interest, recruitment and selection procedures must be approved by the administrator, and the appointing authority shall maintain such records of the procedures followed in making limited term appointments as are determined to be necessary by the administrator. Limited term appointments shall be made so as to contribute to a competent work force with due consideration given to affirmative action.

Pursuant to §230.44(1)(a), Stats., all decisions of the administrator are appealable directly to the Commission. It is possible that the conduct being complained of here would fall outside of the scope of "recruitment and selection procedures." However, in deciding an issue of this nature, the facts must be construed most favorably to the appellant (who is unrepresented) and there is essentially no record of the actions taken by DMRS or of any actions which may have been taken by DHSS pursuant to authority delegated by DMRS. There is also no record on which the Commission can determine whether the standards allegedly utilized in screening out applicants for the LTE positions were substantive rather than procedural, or involved a decision made directly or on a delegated basis by the administrator. In the absence of such a record, it would be inappropriate to dismiss this matter. DMRS will be added as a party and the respondents will be given an opportunity to raise jurisdictional objections and to set forth facts necessary for ruling on any such objections.

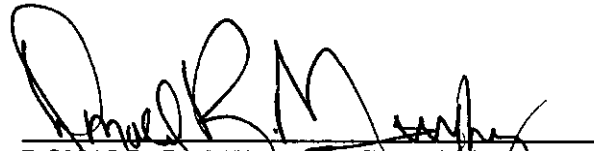
ORDER

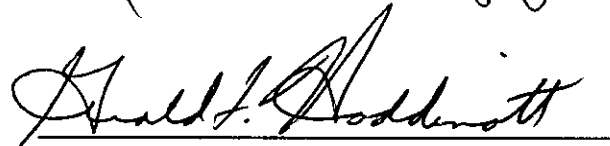
The administrator of the Division of Merit Recruitment and Selection is added as a respondent in this matter. The respondents are provided a period of 20 days from the date of this order in which to indicate they accede to the exercise of jurisdiction by the Commission in this matter or to raise jurisdictional objections.

Dated: June 29, 1989 STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

KMS:kms


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner