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ROBERT KEMP,

Complainant,

v.

Secretary, DEPARTMENT OF
INDUSTRY, LABOR & HUMAN
RELATIONS,

Respondent.

Case No. 94-0178-PC-ER

* * * * *

FINAL ORDER

This is a charge of discrimination on the basis of sex with respect to hire, filed December 5, 1994.¹ The named respondent is the South Central Wisconsin Private Industry Council. Motions have been filed to dismiss on the ground of lack of jurisdiction.

It appears on the basis of the federal law cited in DILHR's brief that the South Central Wisconsin Private Industry Council is an entity created by the Federal Job Training Partnership Act and has independent authority under that law to hire staff, with no state oversight of that role. The Commission's jurisdiction under the FEA is limited to complaints against state agencies as employers §111.375(2), Stats.

Section 111.32(6)(a), Stats., includes in the definition of employer, "the state and each agency of the state." It further defines an "agency" as "an office, department, independent agency, authority, institution, association, society or other body in state government created or authorized to be created by the constitution or any law." Since Private Industry Councils are created by federal, not state law, it is not a state agency with respect to which the Commission has jurisdiction under §111.375(2), Stats.


As mentioned above, federal law gives the Private Industry Councils specific authority to hire staff. While DILHR has some authority pursuant to

¹ The Commission has been advised that the same complaint also was filed with the Equal Rights Division (ERD).

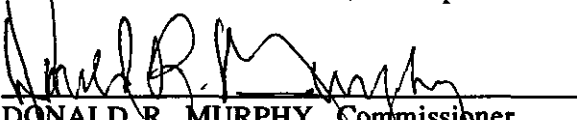
§101.26(1), stats., to act in cooperation with Private Industries Councils and other state agencies to "establish a statewide coordinated employment and training delivery system to meet the employment, training and educational needs of persons in this state," there is nothing in these state or federal laws giving DILHR any oversight of, or any other role in the hiring practices of these councils. Therefore, there is no basis for jurisdiction over DILHR as an agency - employer.

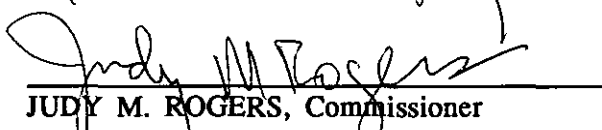
Accordingly, this complaint is dismissed for lack of subject matter jurisdiction.

Dated: March 2, 1995 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

jan


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

Robert Kemp
c/o Robert Gingras
131 W. Wilson St. Suite 610
Madison, WI 53703

Carol Skornicka
Secretary, DILHR
P.O. Box 7946
Madison, WI 53707-7946

NOTICE
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

Petition for Rehearing. Any person aggrieved by a final order (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities.

Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.

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