

NICHOLAS J. KOREMENOS,
Appellant,

v.

**Secretary, DEPARTMENT OF
CORRECTIONS,**
Respondent.

**RULING
ON MOTION
TO DISMISS**

Case No. 01-0046-PC

This matter is before the Commission on the respondent's motion to dismiss for lack of subject matter jurisdiction. The parties have filed written arguments and the following facts appear to be undisputed.

FINDINGS OF FACT

1. At all times relevant to this proceeding, the appellant has been employed as the Human Resources Director at the Ethan Allen School in respondent's Division of Juvenile Corrections.

2. Appellant is a non-represented employee for the purposes of collective bargaining.

3. On June 26, 2001, respondent issued appellant a written reprimand that stated, in part:

This letter is official notification of a written reprimand for violation of the Department of Corrections work rule #4, "Negligence in performance of assigned duties" You failed to provide staffing for the Veterans Job Fair on June 12, 2001 from 12 noon to 1:40 p.m. at the Waukesha County Expo Center.

If you believe this action was not taken for just cause, you may appeal under the grievance procedure of s. ER 46 of the Wisconsin Administrative Code.

4. By letter dated June 27, 2001, and received by the Personnel Commission on July 2, 2001, the appellant filed an appeal of the written reprimand. The letter of appeal stated, in part:

This is my written Appeal for relief from the [written reprimand]. The action discriminates against me since it is not equal treatment¹

The basis for my appeal:

Was there just cause to support the appointing authorities' action? .

..

The reason the Appellant believes the action to be improper:

The action does not meet Tests 2, 4, and 6 of Just Cause.
(Emphasis in original.)

CONCLUSION OF LAW

The Personnel Commission lacks subject matter jurisdiction over this matter as an appeal.

OPINION

The various types of disciplinary actions that are directly appealable to the Personnel Commission are listed in §230.44(1)(c), Stats.

(c) *Demotion, layoff, suspension or discharge.* If an employee has permanent status in class . the employee may appeal a demotion, layoff, suspension, discharge or reduction in base pay to the commission, if the appeal alleges that the decision was not based on just cause.

In *Anand v. DHSS*, 81-438-PC, 1/8/82, the Commission concluded that this language did not include a written reprimand:

The absence of "reprimand" from the list of disciplinary actions expressly subject to the Commission's jurisdiction indicates that the legislature intended appeals from such transactions to be excluded as to that provision. The expression of one thing is the exclusion of another

¹ If appellant feels respondent's conduct constituted discrimination in violation of the Wisconsin Fair Employment Act, subch. II, ch. 111, Stats., he may contact the Personnel Commission to obtain a complaint form. The time limit for filing such a complaint is 300 days after the alleged discrimination occurred.

Teamsters Union Local No. 695 v. Waukesha County, 57 Wis. 2d 62, 203 N.W.2d 707 (1973).

None of the other potential sources of jurisdiction apply to the facts of this case.

The Commission notes that appellant did not grieve this matter through the non-contractual grievance procedure, §230.04(14), Stats. Even if appellant had sought to appeal a 3rd step non-contractual grievance decision to the Commission pursuant to §230.45(1)(c), Stats., such an appeal would be precluded by the language of §ER 46.07(1), Wis. Adm. Code:

[D]ecisions involving the following personnel transactions may not be grieved to the [personnel] commission:

(a) A written reprimand;

In his written arguments, the appellant contends that the Commission has the authority to hear his appeal because he is alleging that respondent abused its discretion: "The Personnel Commission has jurisdiction over appeals concerning abuse of discretion of an appointing authority." The "abuse of discretion" standard is found in §230.44(1)(d), Stats. That paragraph is limited to "a personnel action after certification *which is related to the hiring process*." (Emphasis added.) The written reprimand that is the subject of the present appeal is not related to the hiring process.


ORDER

This appeal is dismissed for lack of subject matter jurisdiction.

Dated: August 27, 2001 STATE PERSONNEL COMMISSION


JUDY M. ROGERS, Commissioner

KMS:010046Arul1


ANTHONY J. THEODORE, Commissioner

Commissioner Laurie R. McCallum did not participate in the consideration of this matter.

Parties:

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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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