

STATE OF WISCONSIN

PERSONNEL COMMISSION

**NICOLE R. BOWMAN-FARRELL,**

v.

**COOPERATIVE EDUCATIONAL  
SERVICE AGENCY #8,  
*Respondent.***

**RULING ON  
RESPONDENT'S  
MOTION TO DISMISS**

Case No. 01-0053-PC-ER

This case is before the Commission on respondent's motion to dismiss for lack of jurisdiction. Complainant, who is represented by counsel, elected not to file written arguments.

#### OPINION

This case arises out of complainant's employment with the Cooperative Educational Service Agency #8 (CESA #8) and includes allegations of discrimination based on national origin/ancestry, race, sex and of retaliation for engaging in an activity protected under the Fair Employment Act (FEA). Also included is an allegation of retaliation for engaging in activities protected under the Whistleblower law.

The Commission's jurisdiction under the Fair Employment Act (FEA) is over employment actions by a state agency acting in the capacity of an employer. See §111.375(2), Stats., and *Conner v. WHEDA*, 93-0154-PC-ER (12/14/94).

Wisconsin state government is comprised of three branches. The legislative branch establishes policies and programs. The executive branch carries out policies and programs established by the legislature. The judicial branch adjudicates conflicts from the interpretation and/or application of the laws. (See §15.001, Stats.) CESA #8 clearly is not a member of the legislative or judicial branches. Therefore, the focus here is whether CESA #8 is a member of the executive branch of state government.

Chapter 15 of the Wisconsin Statutes creates the structure of the executive branch, including the departments and other agencies that are part of the executive branch. No CESA is included therein. Rather, the enabling legislation for a CESA is under Chapter 116, Stats.

Supporting the above conclusion is the court's pronouncement in *Miller v. Mauston School District*, 222 Wis. 2d 540, 588 N.W.2d 305 (Ct. App. 1998), that a CESA is not a "state agency." *Id.* at 556. A pertinent section of the *Miller* decision is noted below (*Id.* at 555-556):

Perhaps the broadest [definition of "state agency"] is the definition in Chapter 20, STATS., "Appropriations and Budget Management," which is also used in other chapters. Section 20.001(1), STATS., provides: "'State agency' means any office, department or independent agency in the executive branch of Wisconsin state government, the legislature and the courts." CESAs are not part of the legislature or the courts, and they are not listed among the offices, departments and independent agencies in Chapter 15, STATS., "Structure of the Executive Branch."

We conclude that CESA does not come within the definition of "state agency" and is not treated as a state agency under Chapter 20, STATS.

Based on the foregoing, the Commission concludes that CESA #8 is not a state agency and the Commission lacks jurisdiction to review the present complaint filed against CESA #8 under the FEA.

The foregoing analysis also is pertinent to claims filed under the Whistleblower law. Coverage under the Whistleblower law is limited by §230.80(1), Stats., to retaliation by an "appointing authority." The term "appointing authority" is defined in §230.80(1m), Stats. as a chief officer of any "governmental unit." The term "governmental unit" is defined in §230.80(4), Stats., as shown below:

"Governmental unit" means any association, authority, board, commission, department, independent agency, institution, office, society or other body in state government created or authorized to be created by the constitution or any law, including the legislature, the office of the governor and the courts. "Governmental unit" does not mean any political subdivision of the state or body within one or more political subdivisions which is created by law or by action of one or more political subdivisions.

The *Miller* decision contains the following pertinent excerpt (*Id.* at 556):

CESAs are specifically included within the definition of “local government unit” for purposes of the local government property insurance fund, *see* §605.01(1), Stats., they are treated as local government units rather than part of state government with respect to public deposits, *see* §34.01(1) and (4), STATS., and they are considered distinct from state agencies for purposes of contracts with the educational communications board. *See* §39.115(3), STATS. They are also specifically included, along with other local facilities and entities, as municipal public works projects for purposes relating to municipal revenue bonds. *See* §66.067, Stats.

In addition CESAs are frequently grouped with school districts in spelling out their duties and functions. *See* §118.22(1), STATS. (teacher contracts); §121.76(1)(a), STATS. (tuition payments); §111.81.12(1), STATS. (promotion and sale of goods and services); and §115.31(1)(b), STATS. (revocation of teacher licenses). *See also* §115.28(3) and (3m) STATS. (role of the state superintendent of public instruction with respect to schools and CESAs). And, as the court in *Rawhouser* recognized, CESAs were created to aid school districts in providing services they were not able to or did not desire to provide. *See Rawhouser*, 75 Wis.2d at 53-54, 248 N.W.2d at 443.

Based on Ch. 116, STATS., which describes the organization and functions of CESAs and their treatment in other statutes, we conclude that a CESA is not a state agency

#### CONCLUSIONS OF LAW

1 Respondent is not an “agency of the state” within the meaning of §111.375(2), Stats. and, accordingly, the Commission lacks jurisdiction over the FEA claims raised in this case.

2. Respondent is not a “governmental unit” within the meaning of §230.80(4), Stats. and, accordingly, the Commission lacks jurisdiction over the claim filed under the Whistleblower law.

ORDER

Respondent's motion is granted and this case is dismissed.

Dated: June 13, 2001.

STATE PERSONNEL COMMISSION

Laurie R. McCallum  
LAURIE R. McCALLUM, Chairperson

Judy M. Rogers  
JUDY M. ROGERS, Commissioner

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Parties:

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271 River Pine Drive  
Shawano, WI 54166

Robert Kellogg  
Administrator, CESA 8  
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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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