

CASMIER KOCHANOWSKI,
Complainant,

v.

**President, MID-STATE TECHNICAL
COLLEGE**
Respondent.

**JURISDICTIONAL
RULING**

Case No. 02-0018-PC-ER

This matter is before the Commission on a jurisdictional dispute. The parties have filed written arguments and the following findings are undisputed:

FINDINGS OF FACT

1. Prior to January of 2002, complainant was employed as a part-time welding instructor by respondent.

2. On January 31, 2002, complainant filed a charge of discrimination/retaliation with the Commission alleging that respondent had retaliated against him in violation of the public safety and health reporting provisions (§101.055, Stats.) and the whistleblower law (§230.80, et seq., Stats.). Complainant described the retaliation as follows:

In my capacity as a part-time instructor during each of the past five semesters, I have showed/apprised my supervisor, Bob Lindaas, of safety/health hazards and a sub-standard learning environment. He would never admit any of them existed, yet by my next class some of them would be rectified. During Fall Semester 2001 I was more persistent than ever before in expressing these deficiencies to Lindaas, and I believe this led to my receiving a letter January 5, 2002 that stated a new instructor has been hired. I want the highest quality of learning possible for our students, greater teaching responsibility, and my honor restored. I believe I am being discriminated/retaliated against for whistleblowing.

3. Upon receipt of the complaint, the Personnel Commission hand-delivered a copy to the Equal Rights Division of the Department of Workforce Development.

FINDINGS OF FACT

1. The complainant has the burden of establishing that the Personnel Commission has subject matter jurisdiction over his complaint.
2. The complainant has failed to sustain his burden.
3. The Personnel Commission lacks subject matter jurisdiction over this appeal.

OPINION

A. Whistleblower claim

As a general matter, the whistleblower law, subch. III, ch. 230, Stats., prohibits retaliatory action against an employee who has made a disclosure regarding improper governmental activity. The enforcement language of the statute is found in §230.85(1): “An employee who believes that a supervisor or appointing authority has initiated or administered, or threatened to initiate or administer, a retaliatory action against that employee in violation of s. 230.83 may file a written complaint with the [personnel] commission.” The term “employee” is defined in §230.80(3) as “any person employed by any governmental unit.” The term “governmental unit” is, in turn, defined in §230.80(4):

“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. (Emphasis added.)

The Mid-State Technical College does not qualify as a “body in state government.”

The Commission analyzed essentially the same jurisdictional issue in *Thomas v. Madison Area Technical College*, 95-0065-PC-ER, 8/4/95. In that case, the complain-

ant filed claims under Wisconsin Fair Employment Act (subch. II, ch. 111, Stats.) and the whistleblower law. The analysis was based on the terms “agency of the state”¹ and “employer”² as used in the Fair Employment act.

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.) MATC clearly is not a member of the legislative or judicial branch of state government. Accordingly, the focus of this inquiry is narrowed to whether MATC is a member of the executive branch of state government.

Chapter 15 of the Wisconsin Statutes creates the structure of the executive branch of state government, including the departments and other agencies which are part of the executive branch. While the Technical College System Board is part of the executive branch (pursuant to §15.94, Stats.) and while the board is staffed by positions under the state classified service (pursuant to §38.04(3), Stats.) MATC is not. Rather, MATC is a district technical school authorized under ch. 38, stats., as part of the Technical College System. Further, hiring authority and day-to-day control rests with the district boards, not with the Technical College System Board. (See §38.12(1) and (3), Stats.)

The definition of “governmental unit” in the whistleblower law is at least as restrictive as the reference to an “agency of the state” found in the Fair Employment Act. As a consequence, the complainant is not an “employee” for purposes of filing a whistleblower claim.

¹ Sec. 111.375(2), Stats., provides that complaints filed under the Fair Employment Act against agencies of the state are to be filed with the Personnel Commission. The Equal Rights Division of the Department of Workforce Development has jurisdiction over complaints filed against other entities acting as an employer.

² The Fair Employment Act’s definition of “employer” is found in §111.32(6)(a):

“Employer” means the state and each agency of the state and any other person engaging in [a] business. In this subsection, “agency” means 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, including the legislature and the courts.

B. Public employee safety and health claim

The stated intent of the public employee safety and health provisions is to give employees of the state, of any agency and of any political subdivision of this state rights and protections relating to occupational safety and health equivalent to those granted to employees in the private sector under the [federal] occupational safety and health act. §101.055(1), Stats.

This law has a similar distribution of authority between the Personnel Commission and the Equal Rights Division as the Fair Employment Act:

A state employee who believes that he or she has been discharged or otherwise discriminated against by a public employer in violation of par. (ar) may file a complaint with the personnel commission alleging discrimination or discharge, within 30 days after the employee received knowledge of the discrimination or discharge. A public employee other than a state employee who believes that he or she has been discharged or otherwise discriminated against by a public employer in violation of par. (ar) may file a complaint with the division of equal rights alleging discrimination or discharge, within 30 days after the employee received knowledge of the discrimination or discharge. §101.055(8)(b)

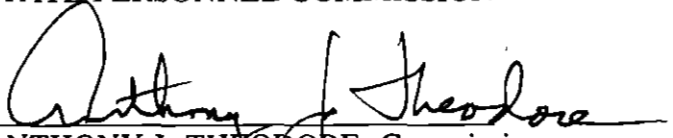
This language clearly establishes that the Personnel Commission does not have any authority to review claims under the public safety and health provisions other than those claims brought by employees of the State of Wisconsin. Because complainant is not a state employee, the Commission lacks jurisdiction over his complaint.

As noted above, the Commission has already supplied a copy of the complaint to the Equal Rights Division.

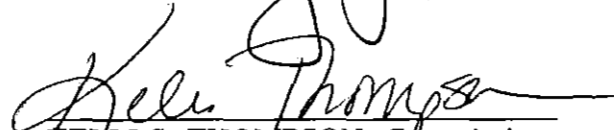
ORDER

This matter is dismissed for lack of subject matter jurisdiction.

Dated: March 21, 2002 STATE PERSONNEL COMMISSION


ANTHONY J. THEODORE, Commissioner

KMS:020018Crull


KELLI S. THOMPSON, Commissioner

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 appli-

cation 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.

2/3/95