

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ROBERT E. KRUGER, JR., Appellant,

v.

President, UNIVERSITY OF WISCONSIN SYSTEM, Respondent.

Case 3

No. 63879

PA(adv)-46

Decision No. 31104

Appearances:

Robert Kruger, N6253 Silver Road, Monticello, Wisconsin 53570, appearing on his own behalf.

Nancy K. Lynch, University Legal Counsel, University of Wisconsin Madison, 361 Bascom Hall, 500 Lincoln Drive, Madison, Wisconsin 53706-1380, appearing on behalf of Respondent.

**ORDER DISMISSING APPEAL FOR
LACK OF SUBJECT MATTER JURISDICTION**

This matter is before the Wisconsin Employment Relations Commission (the Commission) on Respondent's motion to dismiss for lack of subject matter jurisdiction. The last submission of the parties was received by the Commission on September 3, 2004.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. Prior to May 2, 2004, Appellant was employed by University Housing, University of Wisconsin-Madison, in a Custodian Lead position.

2. Effective May 2, 2004, Appellant transferred to another Custodian Lead position within the Facilities Planning and Management (FP&M) Division, Custodial Department, University of Wisconsin-Madison. He was required to serve a six-month probationary period in the new position.

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3. Appellant's employment in the new FP&M position was terminated on July 22, 2004, during his probationary period. The termination letter also informed the Appellant:

Under the provisions of Section ER-Pers 15.055, Wisconsin Administrative Code, you have restoration rights to your previous position or a similar position with the Wisconsin Union. Please contact [either of two individuals] for instructions on your job assignment.

4. On July 28, 2004, Appellant filed a letter with the Commission, seeking to appeal the probationary termination.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSION OF LAW

The Commission lacks subject matter jurisdiction over this matter as an appeal filed under Sec. 230.44 or 45, Stats.

Based on the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER

This matter is dismissed for lack of subject matter jurisdiction.

Given under our hands and seal at the City of Madison, Wisconsin, this 6th day of October, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

Parties:

Robert E. Kruger, Jr.
N6253 Silver Road
Monticello, WI 53570

Kevin Reilly
President, UW System
1720 Van Hise Hall
1220 Linden Drive
Madison, WI 53706

University of Wisconsin System (Kruger)

MEMORANDUM ACCOMPANYING ORDER DISMISSING APPEAL

This matter, arising from a probationary termination decision, was presumably filed as an appeal pursuant to Sec. 230.44(1)(c), Stats. That paragraph provides:

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.

Pursuant to the decision of the Court of Appeals in BOARD OF REGENTS V. WISCONSIN PERSONNEL COMMISSION, 103 WIS.2D 545, 309 N.W.2D 366 (1981), this agency, as the successor agency to the Personnel Commission for appeals filed under Sec. 230.44, Stats., lacks subject matter jurisdiction over appeals of probationary termination decision where the employee is serving an initial probationary period and, therefore, lacks the “permanent status in class” required in Sec. 230.44(1)(c), Stats.

The Commission has held that BOARD OF REGENTS remains applicable and that there is no other jurisdictional basis in Sec. 230.44 and 45, Stats., that is even arguably relevant to the review of a probationary termination or discharge filed with this agency. DEPARTMENT OF CORRECTIONS (GOINS), DEC. NO. 30766 (1/04); DEPARTMENT OF WORKFORCE DEVELOPMENT (STERN), DEC. NO. 30912 (6/04).

The Commission also notes that Kruger appears to have filed a complaint of discrimination/retaliation with the Equal Rights Division (ERD) of the Department of Workforce Development. The fact that ERD may be conducting an investigation in the case before that agency is immaterial to the present case. The Commission’s Order dismissing this matter has no affect on that claim or any claim Mr. Kruger might file with the Commission under the State Employment Labor Relations Act as referenced in Sec. 111.84, Stats.

Because the Commission lacks the authority to hear this matter, it must be dismissed.

Dated at Madison, Wisconsin, this 6th day of October, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner