

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GAIL GAWENDA, Appellant,

vs.

President, UNIVERSITY OF WISCONSIN SYSTEM, Respondent.

Case 9
No. 63742
PA(sel)-14

Decision No. 31149

Appearances:

Gail Gawenda, 1004 Douglas Trail, Madison, Wisconsin 53704, appearing on her own behalf.

Lisa H. Rutherford, Senior University Legal Counsel, 361 Bascom Hall, 500 Lincoln Drive, Madison, Wisconsin 53706-1380, appearing on behalf of the University of Wisconsin System.

ORDER GRANTING MOTION TO DISMISS

This matter is before the Wisconsin Employment Relations Commission on Respondent's motion to dismiss for lack of subject matter jurisdiction. The final brief of the parties was due on October 21, 2004.

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

FINDINGS OF FACT

1. In the spring of 2003, the School of Nursing at the University of Wisconsin-Madison created a new academic staff position in the Alice Simonds Center for Instruction and Research. The position had the working title of "Editor-Nursing (Simonds Ctr)."

2. Gail Gawenda, the Appellant in this matter, filed an application for the position and was interviewed on April 27, 2004.

3. On May 8, 2004, Ms. Gawenda received a letter from Respondent indicating that another applicant had been hired to fill the vacancy.

Dec. No. 31149

4. Ms. Gawenda filed a letter of appeal with the Commission on June 7th, contending that her qualifications exceeded those of the successful applicant.

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 appeal.

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

ORDER

Respondent's motion to dismiss is granted and this matter is dismissed for lack of subject matter jurisdiction.

Given under our hands and seal at the City of Madison, Wisconsin, this 18th day of November, 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:

Gail Gawenda
1004 Douglas Trail
Madison, WI 53716

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

University of Wisconsin (Gawenda)

**MEMORANDUM ACCOMPANYING
ORDER GRANTING MOTION TO DISMISS**

This appeal arises from a decision to select someone other than the Appellant for an academic staff position at the University of Wisconsin-Madison. Respondent has raised a jurisdictional objection.

The Commission's authority to review State civil service personnel transactions is premised upon Sec. 230.44 and 230.45(1), Stats. Of those jurisdictional provisions, the only one even arguably related to the hiring decision in question is Sec. 230.44(1)(d), Stats., which provides:

A personnel action after certification which is related to the hiring process in the classified service and which is alleged to be illegal or an abuse of discretion may be appealed to the commission. (Emphasis added.)

An analysis of Respondent's jurisdictional objection requires an understanding of the distinction between the unclassified and classified service. The primary statutory section that designates positions in the State civil service to be in either the classified or unclassified service is Sec. 230.08, Stats., which provides in relevant part:

- (1) Classes. The civil service is divided into the unclassified service and the classified service.
- (2) Unclassified service. The unclassified service comprises positions held by . . .
- (d) All . . . academic staff, as defined in s. 36.05(1) . . . in the University of Wisconsin System. . . .
- (3) Classified service. (a) The classified service comprises all positions not included in the unclassified service.

The definition of "academic staff" in Sec. 36.05(1), Stats., reads:

"Academic staff" means professional and administrative personnel with duties, and subject to types of appointments, that are primarily associated with higher education institutions or their administration

It is undisputed that the School of Nursing position that is the subject of this appeal is an academic staff position. As such, it is within the unclassified service and consequently falls outside the scope of Sec. 230.44(1)(d), Stats., which only permits appeals from personnel actions related to the hiring process in the classified service. Under these circumstances, the Commission must dismiss the appeal for lack of subject matter jurisdiction.

Dated at Madison, Wisconsin, this 18th day of November, 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