

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JOSEPH GITTENS, Appellant,

v.

President, WISCONSIN TECHNICAL COLLEGE SYSTEM BOARD, Respondent.

Case 3
No. 64091
PA(sel)-16

Decision No. 31278

Appearances

Joseph C. Gittens, 400 Gillette Street, Apt. 335, La Crosse, WI 54603-4205, appearing on his own behalf.

Jennifer S. Lattis, Assistant Attorney General, Department of Justice, PO Box 7857, Madison, WI 53707-7857 appearing on behalf of the Wisconsin Technical Systems Board.

ORDER GRANTING MOTION TO DISMISS

This matter is before the Wisconsin Employment Relations Commission (the Commission) on Respondent's motion to dismiss for lack of subject matter jurisdiction.

The record was closed on January 31, 2005 when the final reply brief was due, even though none was filed.

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

FINDINGS OF FACT

1. In approximately October of 2004, the Wisconsin Technical College System (WTCS) announced that it was accepting applications for the position of President.
2. The WTCS President is identified in the Wisconsin Statutes as the Director of WTCS.
3. The position of President/Director is in the unclassified service.

4. Mr. Joseph Gittens, the Appellant in this matter, unsuccessfully sought appointment to the position and filed a letter of appeal with the Commission. 1

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

CONCLUSIONS OF LAW

1. The Appellant has the burden to establish that the Commission has subject matter jurisdiction over his State civil service appeal.

2. He has failed to sustain his burden.

3. As provided in Sec. 38.04, Stats., the hiring decision relates to a position in the unclassified service.

3. The Commission lacks subject matter jurisdiction over this matter.

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

ORDER

This matter is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 18th day of March, 2005.

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:

Joseph C. Gittens
400 Gillette Street, Apt. 335
La Crosse, WI 54603-4207

Brent Smith
President, WTCS Board
PO Box 7874
Madison, WI 53707-7874

1 While Respondent contends that he never submitted the materials necessary to apply for the vacancy, Gittens takes the position that Respondent should have considered other information already in its possession.

Wisconsin Technical College System (Gittens)

MEMORANDUM ACCOMPANYING ORDER GRANTING MOTION TO DISMISS

This matter is before the Commission on the Respondent's motion to dismiss for lack of subject matter jurisdiction as a State civil service appeal. The Commission's authority to review various civil service personnel actions arises from Sec. 230.44 and .45, Stats. 2 Of those provisions, the only one that relates to a failure to hire is Sec. 230.44(1)(d), Stats., which grants the Commission the authority to review certain personnel actions "related to the hiring process in the classified service."

While the Commission may review the hiring process for a classified position, the position that is the subject of this appeal is in the unclassified service. As provided in Sec. 38.04(2), Stats.: "The [WTCS] board shall appoint a director, outside the classified service, to serve at its pleasure."

Because the position of Director/President of the WTCS is within the unclassified service rather than the classified service, the hiring process falls outside the scope of Sec. 230.44(1)(d), Stats. None of the other provisions in Sec. 230.44 or .45 encompass this appeal. The Commission lacks subject jurisdiction over this matter as an appeal from a State classified service personnel transaction. Therefore, it is dismissed.

Dated at Madison, Wisconsin, this 18th day of March, 2005.

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

2 Mr. Gittens' lengthy submissions in this matter reference state and federal laws that are unrelated to the Commission's authority to review certain State civil service personnel transactions as provided in Sec. 230.44 and .45, Stats. The Commission declines to address those other contentions in the context of this Order. To the extent Gittens seeks to contend that "any state employer or state employees, individually or in concert with others have engaged in, or are engaging in, any prohibited or unfair labor practice, as defined in s. 111.84, Stats.," he may file a complaint form, accompanied by the requisite filing fee, with the Commission. The filing period is established in Sec. 111.07(14), Stats.