

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RHONDA LYNN STRUENSEE, Appellant,

v.

President, UNIVERSITY OF WISCONSIN SYSTEM, Respondent.

Case 17
No. 64702
PA(adv)-36

Decision No. 31348

Appearances:

Rhonda Lynn Struensee, N4410 Miller Avenue, Neillsville, Wisconsin 54456, appearing on her own behalf.

Edward S. Alschuler, Deputy General Counsel, University of Wisconsin System, 1852 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin 53706, appearing on behalf of Respondent.

ORDER DISMISSING APPEAL FOR LACK OF SUBJECT MATTER JURISDICTION

This matter arises from the Respondent's decision to terminate Ms. Struensee's employment while she was employed on a probationary basis. The Commission informed the Appellant that her appeal raised a jurisdictional issue and invited the Appellant to provide information as to why the case should not be dismissed. The last date for Appellant's submission was May 11, 2005. In circumstances such as this, where the letter of appeal provides an unambiguous basis for concluding that the Commission lacks subject matter jurisdiction, the Commission exercises its authority to raise a jurisdictional question *sua sponte*. SEE *ACHTOR V. PEWAUKEE LAKE SANITARY DIST.* 88 WIS.2D 658, 664, 277 N.W.2D 778 (1979).

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

FINDINGS OF FACT

1. Appellant commenced employment as a Custodian at the University of Wisconsin – La Crosse on September 7, 2004. She was required to successfully complete a probationary period that ran until March 6, 2005.

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2. Respondent terminated Appellant's employment on or about February 21, 2005, before the end of her probationary period.

3. On March 23, 2005, Appellant filed a letter of appeal with the Commission, seeking reinstatement, back pay and discipline of her former supervisor and lead worker.

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 as an appeal filed under Sec. 230.44 or .45, Stats.

Given under our hands and seal at the City of Madison, Wisconsin, this 2nd day of June, 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:

Rhonda Lynn Struensee
N4410 Miller Avenue
Neillsville, WI 54456

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

University of Wisconsin System (Struensee)

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., even arguably relevant to the review of a probationary termination or discharge filed with this agency. DEPARTMENT OF CORRECTIONS (GOINS), DEC. No. 30766 (WERC, 1/04).

Because the Commission lacks the authority to hear this matter as an appeal under Sec. 230.44 or .45, it must be dismissed.

Dated at Madison, Wisconsin, this 2nd day of June, 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