

name from the Certification List of eligible candidates issued to our Department for the [DCAT] class title, in accordance with Commonwealth Management Directive 580.34 Amended.” (R. Item No. 2.) The letter went on to inform Donahue that before the Department initiates the request, he “will have the opportunity to explain why [the] *proposed* action may be improper” by providing a written statement. *Id.* (emphasis added).

Instead of replying to the letter, Donahue appealed to the Commission on September 17, 2014, by submitting form SCSC-4112 (Appeal Request Form) and supporting documents. As of that date, the Department had not yet initiated the possible list removal request it was considering with the Commission.

After the Department formally requested to remove Donahue’s name from the DCAT certification list with the Commission on September 26, 2014, the Commission sent Donahue form SCSC-5275R pursuant to the procedure set forth in the Commonwealth Management Directive 580.35, asking him to complete and return the form if he wanted to contest the Department’s list removal request. Donahue e-mailed the Commission a digital copy of the completed form. By letter dated October 20, 2014, the Commission acknowledged receipt of Donahue’s e-mailed form and requested that he also send the original signed copy of the form, along with any other attachments, for its records. The Commission’s letter also informed Donahue that his September 17, 2014 appeal had been prematurely filed, but that despite the premature nature of the appeal, “the Commission will, at your request, use the form SCSC-4112 you submitted with attachments on September

17 as your written response to this current list removal request if you instruct [the Commission's Chief Counsel] to do so.” (R. Item No. 3.)

Donahue responded with an e-mail in which he stated, in part, “My complaint SCSC-4112 is a separate complaint, although clearly related.” (R. Item No. 4.) Per Donahue’s instruction, his September 17, 2014 appeal was treated as a separate complaint, for which the Commission denied a hearing on the basis that it was prematurely filed before any list removal request was initiated by the Department.¹ Donahue then appealed.²

On appeal, Donahue contends that the Commission erred in finding his September 17, 2014 appeal premature and in not offering him a hearing on the matter, as he has the right to file complaints with the Commission upon discovering that he was discriminated against. He argues that form SCSC-4112 specifically provides that, “Any person who is aggrieved by an alleged violation of Section 905.1 of the Civil Service Act may appeal in writing WITHIN TWENTY (20) CALENDAR DAYS OF THE ALLEGED VIOLATION,” and, thus, he appealed on September 17, 2014, after having discovered that he was discriminated against on August 30, 2014. (R. Item No. 1.)

¹ Donahue’s timely challenge to the Department’s list removal request, via form SCSC-5275R, is being processed separately.

² Our scope of review of a determination of the Civil Service Commission is limited to determining whether constitutional rights have been violated, an error of law has been committed and whether necessary findings of fact are supported by substantial evidence. *Williams v. State Civil Service Commission*, 811 A.2d 1090, 1092 n.1 (Pa. Cmwlth. 2002).

This Court has held that a charge or appeal “will be dismissed as premature when the action at issue has not yet been implemented, leaving the [agency] unable to determine its relative impact on the parties involved and unable to dispositively rule upon whether an unfair practice has occurred.” *Association of Pennsylvania State College and University Faculties v. Pennsylvania Labor Relations Board*, 661 A.2d 898, 901 (Pa. Cmwlth. 1995).

In the instant case, Mr. Grab’s letter to Donahue notified him that the Department would request, in the future, that his name be removed from the DCAT certification list and that when that occurred, Donahue would have the opportunity to contest it by providing a written statement as to why the *proposed* action may be inappropriate. The language of Mr. Grab’s letter is rather clear as to the fact that the Department had not yet requested any action that would negatively affect Donahue, and Donahue’s appeal was to an action that had not yet been taken and was premature, as evidenced by Donahue’s later appeal after the Department had taken the proposed action.

Accordingly, we affirm the Commission’s order.

DAN PELLEGRINI, President Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Sean M. Donahue,	:
Petitioner	:
	:
v.	: No. 2268 C.D. 2014
	:
State Civil Service Commission	:
(PA Department of Labor and	:
Industry),	:
Respondent	:

ORDER

AND NOW, this 8th day of July, 2015, the Order of the State Civil Service Commission dated November 19, 2014, at No. 28441, is affirmed.

DAN PELLEGRINI, President Judge