

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 *
 WILLIAM RAY, *
 *
 Appellant, *
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 v. *
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 UNIVERSITY OF WISCONSIN, *
 *
 Respondent. *
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 Case No. 78-129-PC *
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OPINION
AND
ORDER

OPINION

This matter is before the Commission on respondent's motion to dismiss based on failure to state a cause of action for which relief can be granted. This motion is based on the appellant's answers to certain written interrogatories propounded by the respondent.

By way of background, this matter was appealed to the Commission pursuant to §§111.91(3) and 230.45(1)(f), Stats., and Article X of the collective bargaining agreement between the state and the WSEU (blue collar) following a determination by management at the third step of a contract grievance procedure that the subject matter was not grievable under the contract.

The respondent's first interrogatory was as follows:

"What specific acts committed by the [respondent] do you allege ... to be arbitrary and illegal?"

The appellant responded as follows:

"The University of Wisconsin has developed and filled a Power Plant Superintendent I position at the University of Wisconsin - LaCrosse power plant. The duties assigned to that position do not properly fall within that classification."

Section 111.91(3), Stats., provides for agreements providing for appeals "on differences arising under actions taken by the employer under subsection (2)(b) 1 and 2. "Section 111.91 (Subjects of bargaining) provides at (2):

"Except as provided in subsection (3), the employer is prohibited from bargaining on:

* * *

(b) Policies, practices and procedures of the civil service merit system relating to:

1. Original appointments and promotions specifically including recruitment, examinations, certification, appointments, and policies with respect to probationary periods.

2. The job evaluation system specifically including position classification, position qualification standards, establishment and abolition of classifications, assignment and reassignment of classifications to salary ranges, and allocation and reallocation of positions to classifications, and the determination of an incumbent's status resulting from position reallocations."

In the contract grievance at the third step, a copy of which was attached to the appeal letter, the grievance was described as "The use of supervision to do bargaining unit work," and the relief sought was: "Fill and reinstate the power plant equipment operator position. No supervision doing bargaining unit work, unless in an emergency, then only till a man come in."

In light of the content of the grievance as well as the answer to the first interrogatory set forth above, it must be concluded that the subject matter of this grievance does not fall within the parameters of §111.91(2)(b) 1 and 2. The appellant's concerns are not that the position in question is improperly classified. Rather, he is concerned about the duties assigned to that position. To make the argument that

these duties are outside of the class specifications for the classification of the position does not bring the matter under §111.91(2)(b) 1 and 2. Clearly §111.91(2)(b) 1 does not apply. This subsection concerns the examination and appointment process. Section 111.91(2)(b) 2 concerns the "job evaluation system," or how positions all classified in light of the duties and responsibilities assigned by management.

What the appellant is appealing here is a question concerning the assignment of duties and this is not included in §111.91(2)(b) 1 and 2 and is not appealable pursuant to §§111.91(3) and 230.45(1)(f), Stats.

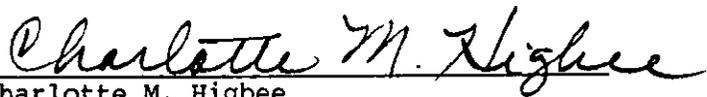
ORDER

This appeal is dismissed for lack of subject-matter jurisdiction.

Dated: August 30, 1979. STATE PERSONNEL COMMISSION



Joseph W. Wiley
Chairperson



Charlotte M. Higbee
Commissioner