

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 *
 LEO WITKOWSKI, *
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 Appellant, *
 *
 v. *
 *
 THE DEPARTMENT OF HEALTH AND *
 SOCIAL SERVICES, *
 *
 Respondent. *
 *
 Case No. 78-149-PC *
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DECISION
AND ORDER

NATURE OF THE CASE

This is an appeal of a non-contractual grievance. The respondent has objected to the Commission's jurisdiction over the subject matter of this grievance and the parties have filed written arguments. The findings which follow are based on undisputed material in the file.

FINDINGS OF FACT

1. The appellant's first step non-contractual grievance was stated as follows:

"On 5/18 payday my check was short of what I had figured. Upon checking the figures for period ending 5/6 I found that I was paid overtime for 4/19 instead of being paid overtime for 4/23 of which I worked, thereby denying me the overtime rate for Sunday which is different than Saturday and weekdays. Therefore I'm being docked for no reason. This procedure is discrimination against everyone that works overtime on Sundays."

2. The second step grievance contained in part the following:

"Same as step 1 plus that management agrees but orders from Dept. of Administration have to be followed. This procedure does not concur with State Statutes "

3. The third step grievance contained the following:

"Same as steps 1 and 2. The procedure used violates State Statutes and discriminates against anyone working overtime on any Sunday. It is also inconsistent."

4. The final (third) grievance response was:

"Overtime payment was made in accordance with the Wisconsin State Employees Union Contract. Grievance denied."

5. The collective bargaining agreement in effect between the State of Wisconsin and the Wisconsin State Employees Union during the period in question covered the officer classification occupied by the appellant.

CONCLUSIONS OF LAW

1. This appeal is of a grievance relating to "wages, hours and conditions of employment" as set forth in §111.93(3), Wis. Stats.

2. The provisions of the civil service or other statutes relating to this matter are superseded by the existence of a collective bargaining agreement and the Commission lacks jurisdiction over the subject matter on this appeal.

OPINION

Section 111.91(1), Wis. Stats., provides in part: "Matters subject to collective bargaining to the point to impasse are wage rates ... hours and conditions of employment " Section 111.93(3), Wis. Stats., provides as follows:

"If a labor agreement exists between the state and a union representing a certified or recognized bargaining unit, the provisions of such agreement shall supersede such provisions of civil service and other applicable statutes related to wages, hours and conditions of employment whether or not the matters contained in such statutes are set forth in such labor agreement."

The point of these statutes are clear. When there is a collective bargaining agreement in force, the provisions of that agreement supersede

the civil service statutes with respect to wages, hours and conditions of employment, and there is no recourse as to such matters to the Personnel Commission.

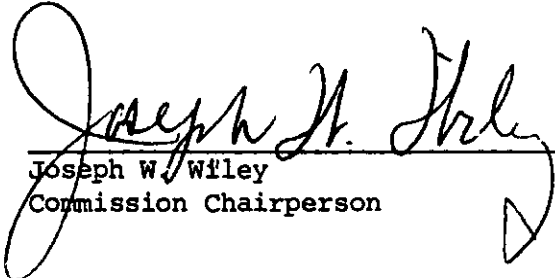
The appellant's grievance, relating to the computation or payment of overtime compensation, fits in this category covered by §111.93(3).

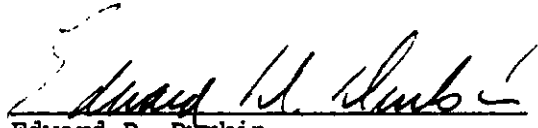
ORDER

This appeal is dismissed for lack of subject matter jurisdiction.

Dated: Jan 26, 1979.

State Personnel Commission


Joseph W. Wiley
Commission Chairperson


Edward D. Durkin
Commissioner


Charlotte M. Higbee
Commissioner