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 *
 DAVID WING, *
 *
 Appellant, *
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 v. *
 *
 President, UNIVERSITY OF *
 WISCONSIN SYSTEM, *
 *
 Respondent, *
 *
 Case No. 78-159-PC and *
 Case No. 79-240-PC *
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 * * * * *

DECISION
 AND
 ORDER

NATURE OF THE CASE

These are appeals of noncontractual grievances relating to s.230.12(7), stats., exceptional performance awards. The respondent has objected to subject matter jurisdiction and the parties have filed briefs.

OPINION

Section §30.45(1)(c), stats., gives the Commission the authority with respect to grievances relating to "conditions of employment." This case raises the question of whether an exceptional performance award is properly considered a "condition of employment."

In DHSS v. Personnel Commission (Hovel), No. 79 CV 5630 (Dane County Circuit Court, 1/29/81), Judge Eich noted that "the terms 'wages', 'hours', and 'conditions of employment' have come to be considered as distinct 'terms of art' in the field of labor-management relations, and held that a decision on hiring above the minimum concerned wages and was not cognizable pursuant to s.230.45(1)(c), stats., as a "condition of employment."

Exceptional performance awards are included expressly in the "compensation" statute, s.230.12, at s.230.12(7). Although items that were not intended to be considered compensation (e.g., uniforms, food) were included in the "compensation"

statute, the statute expressly stated that these items were not to be considered compensation. No such express exclusion was made in regard to exceptional performance awards.

In an opinion of the Attorney General dated September 6, 1978, OAG 65-78, he addressed the question of whether the "raised hiring rate" and "hiring above the minimum" practices pursuant to s. Pers 5.02(1) and (2), Wis. Adm. Code, were proper exclusions from the subjects of collective bargaining under s.111.91(2)(b)1., stats. He concluded that they are not so excluded, noting that these matters are primarily concerned with compensation. The Attorney General further noted that the compensation plan expressly is made subordinate to the collective bargaining process by s.230.10(1), stats., and as noted above, exceptional performance awards are governed by s.230.12(7), which provides that eligibility determinations are to be made in accordance with the provisions of the compensation plan.

This Commission previously has held that it lacked jurisdiction pursuant to s.230.45(1)(c), stats., as to grievances related to discretionary performance awards, see Johnson v. DOR, 78-245-PC (6/27/80); Bartol v. DOT, 79-309-PC (6/27/80). While the Commission did decide on the merits an issue relating to a discretionary performance award in Romanski v. DOR, 78-155-PC (4/19/79), in that case no jurisdictional issue was raised before or addressed by the Commission, which also was the case in Hovel v. DHSS, 78-115-PC (10/2/79), which precipitated the aforesaid circuit court decision.

The Commission is of the opinion that exceptional performance awards are not "conditions of employment" as that term is used in s.230.45(1)(c), stats., and therefore the Commission lacks subject matter jurisdiction over this appeal.

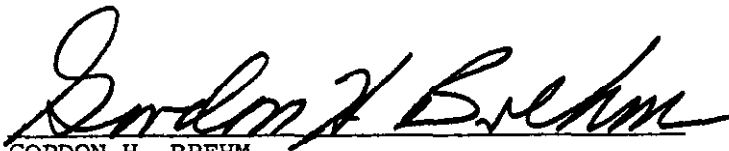
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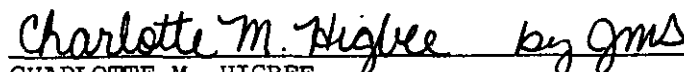
ORDER

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

Dated: Sept. 23, 1981

STATE PERSONNEL COMMISSION


GORDON H. BREHM
Chairperson


CHARLOTTE M. HIGBEE
Commissioner

AJT:ers

(Commissioner Murphy did not participate in the consideration or decision of this matter due to his employment by the University of Wisconsin System at the time these appeals were filed.)

Parties

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