

which this appeal was brought. One appeal has been decided under Ch. 230, Wis. Stats., (1977), Romanski v. DOR, 78-155-PC, 4/19/79. The Commission in Romanski exercised jurisdiction under s.230.45(1)(c), Wis. Stats., (1977), of an appeal of a grievance concerning a merit rating and merit increase. The respondent did not object to Commission jurisdiction and the Commission did not discuss any jurisdictional issues in its decision. An agency always has jurisdiction to determine its jurisdiction and is not estopped from re-considering the scope of its subject matter jurisdiction.

Respondent objects to Commission jurisdiction on the ground that the grievance does not involve an allegation of agency violation, through incorrect interpretation or unfair application, of a personnel rule or civil service statute, or a function delegated by the Director of the State Bureau of Personnel to an appointing authority. Respondent asserts such allegations are necessary in order to appeal to the Commission at the fourth step, and relies on the grievance procedure set out in the Administrative Procedure Manual and DOR Administrative Directive 370-1.3 (a copy of which was made part of its Brief in Support of Motion to Dismiss). Appellant argues that the Commission has jurisdiction pursuant to s.230.44(1)(a), (b), or (d), Wis. Stats., (1977).

Respondent relies on a grievance procedure and rules in continued effect under the transitional provisions of Ch. 196, s.129(4)(g), Laws of 1977, in the absence of new rules promulgated by the Secretary of the Department of Employment Relations pursuant to s.230.45(1)(c), Wis. Stats., (1977). Even though authorized by the transitional provisions, the operation of the grievance procedure and of some of the provisions of Wis. Adm. Code,

Ch. PERS 25, are modified by Ch. 230, Wis. Stats., (1977).¹ The grievance procedure and Ch. PERS 25 were promulgated while Ch. 16, Wis. Stats., predecessor to Ch. 230, Wis. Stats., (1977), was in effect. Appeals from personnel actions delegated by the administrator to an appointing authority are now directly appealable under s.230.44(1)(b), Wis. Stats., (1977). The grievance procedure also authorizes such appeals, as "a function where the Director of the State Bureau of Personnel expressly delegated his authority to the appointing officer. . . ." A.P.M., Non-contractual Employee Grievance Procedures, s. I.D.1.b.(2). Using the same analysis as in Wing v. UW, supra, the Commission finds that portion of the A.P.M. superceded to the extent it is construed in the context of s.230.44(1)(a), Wis. Stats., (1977). Not every unfair application or incorrect interpretation of a civil service statute is appealable to the Commission. The pertinent question in this case is whether the subject matter of the appeal is related to conditions of employment which are grievable and appealable to the Commission under s.230.45(1)(c), Wis. Stats., (1977), and under the remaining sections of the grievance procedure.

A merit increase is a within pay range adjustment to an employe's base pay rate, s.230.12(5)(a) and (d), Wis. Stats., (1977). The language of the statute is clear. Additional discussion can add nothing to make it any clearer. The evaluation of employes is part of the determination of the wage rate and is therefore related to wages. The subject matter of this grievance is not appealable to the Commission as a final step arbiter.

¹See Wing v. UW, 78-137-PC, 4/19/79.

The employe evaluation and the award of a merit increase is the decision of the appointing authority; s.230.12(5)(d) and s.230.06(1), Wis. Stats., (1977). The Commission does not have jurisdiction over this appeal pursuant to s.230.44(1)(a) or (b), Wis. Stats., (1977).

CONCLUSIONS OF LAW

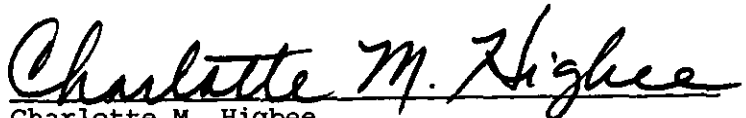
1. The burden of proof to show that the Commission has jurisdiction of the appeal is on the party asserting jurisdiction.
2. Whether the Commission has jurisdiction of this appeal is a matter of law.
3. The Commission does not have jurisdiction over this appeal under s.230.45(1)(c), or under s.230.44(1), Wis. Stats., (1977).

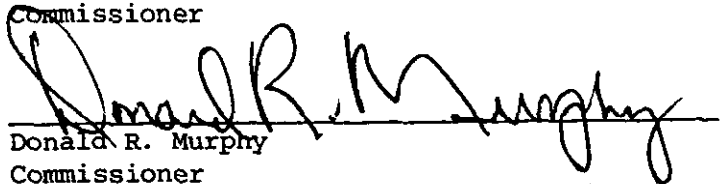
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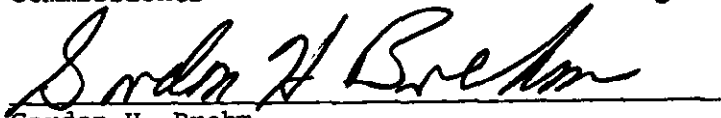
The respondent's motion to dismiss is granted and this appeal is hereby dismissed.

Dated June 27, 1980

STATE PERSONNEL COMMISSION


Charlotte M. Higbee
Commissioner


Donald R. Murphy
Commissioner


Gordon H. Brehm
Commissioner