

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *

FRANCES REISSMANN, *

Appellant, *

v. *

DEPARTMENT OF INDUSTRY, LABOR, *

AND HUMAN RELATIONS, *

Respondent. *

Case No. 78-78-PC *

* * * * *

INTERIM
DECISION

NATURE OF THE CASE

This appeal involves a complaint relating to the utilization of the appellant in a position in an acting capacity and to the handling of a civil service selection process. At the prehearing conference the respondent objected to subject-matter jurisdiction over so much of the appeal as relates to any claim for back pay for appellant's work in a supervisory position in an acting capacity. The parties have filed briefs on the jurisdictional question. The findings which follow are based on material in the file which appears to be undisputed.

FINDINGS OF FACT

1. The appellant at all relevant times has had permanent status in class as a Job Service Assistant 1, an included classification under the agreement between the State of Wisconsin and AFSCME, Council 24, WSEU, AFL-CIO, September 11, 1977 - June 30, 1979.
2. On September 3, 1977, a Job Service Assistant Supervisor 3 position in the DILHR Wausau office became vacant.
3. On September 26, 1977, the appellant was directed to and began

to fill this position in an acting capacity pending the completion of a selection process to fill the vacancy.

4. Following a selection process, which included a re-announcement in which appellant participated and was certified, another person was appointed to the position on a permanent basis on July 2, 1978.

5. The appellant was removed from her acting capacity assignment effective May 15, 1978, and the person who eventually was appointed on a permanent basis was then given the acting assignment.

6. The appellant's appeal was filed May 26, 1978.

CONCLUSIONS OF LAW

1. The assignment of the appellant in an acting capacity to the position of Job Service Assistant Supervisor 3 and the determination of her salary while in that position are not directly appealable to the commission.

2. The determination of appellant's salary while in an acting capacity is within the purview of §111.91(1), Stats. (1977) and pursuant to §111.93(3), any issue as to that matter is superseded by the collective bargaining agreement.

3. The commission lacks jurisdiction over so much of the subject matter of this appeal that relates to the assignment of the appellant in an acting capacity to the position of Job Service Assistant Supervisor 3 and the determination of her salary while in that position.

OPINION

It is apparent from a review of the appellant's appeal letter and brief that this appeal involves two different subjects - the way the selection process for the Job Service Assistant Supervisor 3 vacancy

was handled and the appellant's pay status while serving in that acting capacity. The respondent has objected to commission jurisdiction over the latter subject. The commission is of the opinion that that objection is well taken, for at least two reasons.

The commission is unable to find any authority under the statutes for a direct appeal to the commission of the transaction effected here by the appointing authority of placing appellant in the supervisory position in an acting capacity without changing her salary. Prior to the effective date of Chapter 196, Laws of 1977, such a transaction arguably might have been appealed to the director pursuant to §16.03(4)(a), Stats. (1975) as a personnel decision of the appointing authority alleged to be illegal or an abuse of discretion, and the director's decision in turn would have been appealable pursuant to §16.05(1)(f), Stats. (1975). With the repeal of §16.03(4)(a), this appeal route is no longer authorized.

The second jurisdictional barrier stems from §§111.91(1) and 111.93(3), Stats. (1977). The former subsection provides in part:

"Matters subject to collective bargaining to the point of impasse are wage rates, as related to general salary scheduled adjustments consistent with sub(2), and salary adjustments upon temporary assignment of employees to duties of a higher classification...."

The latter subsection provides:

"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."

Since the question of appellant's pay rate on acting assignment is,

in the opinion of the commission, within the purview of §111.91(1),
the existence of a labor agreement supersedes any possible appeal rights
on this issue to the commission. See, e.g., Green v. DILHR, Wis. Pers.
Bd. No. 77-112 (5/18/78).

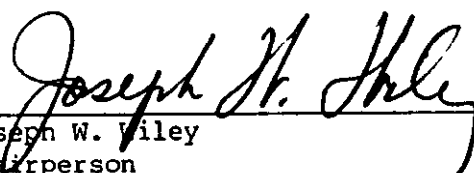
The respondent also has objected on the grounds that the commission
does not have authority to award back pay as a remedy over so much of
the appeal as it does have jurisdiction. In the opinion of the commission
this objection does not run to subject-matter jurisdiction and it will
not be addressed at this time.

ORDER

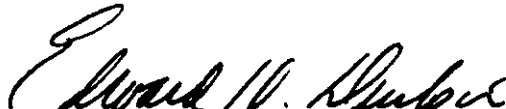
So much of this appeal as relates to the appellant's assignment
in an acting capacity to the position of Job Service Assistant Supervisor
3 and her compensation therefore is dismissed for lack of jurisdiction
over the subject matter.

Dated: Feb 28, 1979.

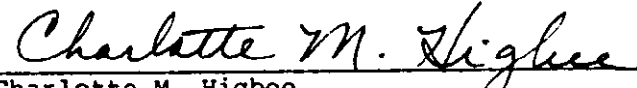
STATE PERSONNEL COMMISSION



Joseph W. Wiley
Chairperson



Edward D. Durkin
Commissioner



Charlotte M. Higbee
Commissioner

AJT:jmg

2/22/79