

STATE OF WISCONSIN

PERSONNEL COMMISSION

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FREDDIE LOTT, *

Appellant, *

v. *

Secretary, DEPARTMENT OF HEALTH *
AND SOCIAL SERVICES, and *
Administrator, DIVISION OF *
PERSONNEL, *

Respondents. *

Case No. 79-160-PC *

* * * * *

INTERIM DECISION
AND
ORDER

NATURE OF THE CASE

This is an appeal of a denial of a request for reclassification and of a layoff decision, both with respect to appellant Lott. The Department of Health and Social Services has moved to be dismissed as a party to the portion of the appeal which concerns the reclassification on the ground that the reclassification request involved a non-delegated position. The Department also moves to dismiss that part of the appeal which concerns the layoff decision, on the ground that the layoff is subject to collective bargaining grievance procedures and that §111.93(3), Wis! Stats., pre-empts Commission jurisdiction over that appeal. This decision goes only to the jurisdictional objections raised.

FINDINGS OF FACT

1. The position of Clerk 3 is delegated by the Division of Personnel to the Department for reclassification actions.

2. The position of Equal Opportunity Specialist is not delegated by the Division of Personnel to the Department for reclassification purposes.

3. Appellant alleges participation by the Department in decisions affecting his classification which include more involvement in the reclassification process than merely making a recommendation to the Division of Personnel.

4. The position of Clerk 3 is a position represented in a bargaining unit which is subject to a collective bargaining agreement with the State of Wisconsin.

CONCLUSIONS OF LAW

1. The Department is a proper party to this appeal of a reclassification decision at this stage of the appeal.

2. The Commission does not have jurisdiction to hear the appeal of a layoff decision concerning appellant because §111.93(3), Wis. Stats., operates to pre-empt jurisdiction under the facts of the case.

OPINION

A. Reclassification Appeal

There is no dispute between the parties that the position of Equal Opportunity Specialist is not delegated for reclassification decisions. The Department moves for dismissal of itself as a party on the basis of that undisputed fact. The appellant has, however, alleged facts concerning actions relating to the reclassification ^{at} of the Department level, which actions are alleged to have affected the outcome at the Division level. The Department should remain a party to this

appeal at this stage in order to give the appellant the opportunity to prove his allegations and to show the responsibility, if any, of the Department for the denial of the reclassification. The door remains open for the Department to move for dismissal at a later time if a more persuasive factual basis for dismissal appears than appears at present.

B. Layoff Appeal

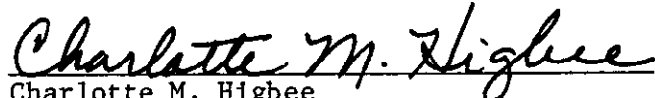
The parties do not dispute that appellant's position of Clerk 3 was subject to the collective bargaining grievance process concerning subjects of bargaining. Appellant admits the layoff was in fact grieved under a collective bargaining agreement up to the point of going to arbitration, when the union declined to represent Mr. Lott in arbitration proceedings. The appellant argues because the union "refused to carry out its duty, leaving Mr. Lott without a remedy," that jurisdiction is therefore conferred on the Commission. This set of facts does not confer jurisdiction over what is clearly a collective bargaining condition of employment, which is apparently covered by such agreement. Oibrantz v. Earl, Case No. 75-9, Pers. Bd. 3/75.

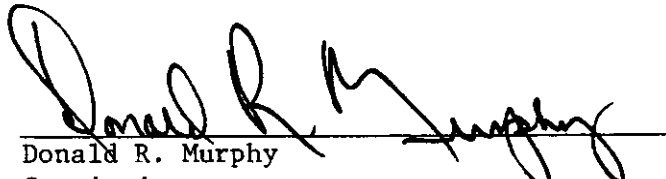
ORDER

1. Respondent Department of Health and Social Services' motion to be dismissed as a party to the reclassification appeal is denied.

2. Respondents' motion to dismiss the layoff appeal is granted, and so much of the appeal as concerns the layoff of Mr. Lott is hereby dismissed.

Dated: March 24, 1980. STATE PERSONNEL COMMISSION


Charlotte M. Higbee
Commissioner


Donald R. Murphy
Commissioner

AR:arl
3/20/80