

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 *
 JAMES WICKMAN et al, *
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 Appellant, *
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 v. *
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 Administrator, DIVISION OF *
 PERSONNEL, *
 *
 Respondent. *
 *
 Case No. 79-302-PC *
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DECISION
 AND
 ORDER

NATURE OF THE CASE

This is an appeal by certain administrators at Lincoln Hills School of decisions to pay certain employes straight time instead of time and one-half for hours worked in excess of 40 during the 1977 state employes work stoppage and to the decision by the respondent in the context of the resolution of Olson v. Division of Personnel, Case No. 78-11, to pay certain employes, appellants in that case, time and one-half for extra work during this period. The respondent has moved to dismiss on the ground that the appeal was not timely filed. The parties have filed written arguments. The material facts relating to subject-matter dispute do not appear to be in dispute and are set forth below.

FINDINGS OF FACT

1. The appellants were employes at Lincoln Hills School during the state employes work stoppage which occurred in July 1977.
2. Pursuant to a directive signed by the Secretary of the

Department of Administration dated July 11, 1977, the appellants were paid at straight time, as opposed to time and one-half, for time worked during the strike in excess of 40 hours per week.

3. The appellants knew or should have known in 1977 of the policy with regard to payment at a straight time rate as set forth in the preceding paragraph as this would have been reflected in their pay-checks for the period of the work stoppage.

4. In a case before the Personnel Board, Olson et al v. Division of Personnel, Case No. 78-11, certain DHSS employes (not including any of the appellants) appealed the denial of a non-contractual grievance regarding the strike overtime policy.

5. Following a hearing the hearing examiner promulgated on July 20, 1979, pursuant to §227.09(2), Stats., a Proposed Decision which concluded that the appellants in that case were entitled to be paid at the premium rate for overtime worked during the strike.

6. The parties to the Olson appeal reached a compromise of the matter before the Proposed Decision was acted on by the Commission, and as a result of that compromise payment was made to the named appellants in that case of the extra salary they would have received at the premium rate, and the appeal was withdrawn.

7. This appeal was filed with the Commission on October 29, 1979.

CONCLUSIONS OF LAW

1. This appeal was not filed in a timely manner in connection with the decision in 1977 not to authorize premium pay for overtime worked by appellants during the state employes' work stoppage.

2. The appellants lack standing to appeal the respondent's

decision in 1979 to authorize premium pay for the appellants in Olson v. Division of Personnel, 78-11, as part of the settlement of that appeal.

OPINION

In their letter dated March 5, 1980, the appellants argue:

"We did not realize we had been aggrieved until Case No. 78-11 (Olson v. Department of Personnel) was decided, with the result that certain personnel in the same classification as our group were reimbursed time and one-half for hours worked beyond 40 each week during the strike in 1977. It was at that time we realized we had been aggrieved; therefore, timeliness is not an issue relative to our appeal because we did appeal it at the time we became aware of the change in policy as described in Mr. Torphy's memo of July 11, 1977."

Laying to one side the fact that there was never a final decision on the merits in the Olson case, the Commission cannot agree with the appellants' theory. Section 230.44(3), Stats., provides in part:

"Any appeal filed under this section may not be heard unless the appeal is filed within 30 days after the effective date of the action, or within 30 days after the appellant is notified of the action, whichever is later ..."

Thus the appeal time starts to run from the date of notice of the action, not the date of notice of matters that might lead the appellant to believe that the action was improper. Compare, Bong & Seeman v. DILHR & DP, Wis. Pers. Commn. 79-167-PC (11/8/79).

Appellants also argue that they also are appealing the more recent decision to pay the appellants in the Olson case, but not them. In the opinion of the Commission, under the circumstances of this case the appellants lack standing to appeal this action.

The respondent's predecessor, the director of the Bureau of

Personnel, made a decision in 1977 as to who would be paid at the premium rate for overtime performed during the strike. The appellants did not appeal that decision in a timely manner, and, for reasons set forth above, are barred by §230.44(3), Stats., from pursuing an appeal of that decision at this time.

Mr. Olson and his co-appellants did file a timely appeal, see Interim Opinion and Order dated August 28, 1978, and this contested case ultimately was compromised and settled by the parties prior to a final decision on the merits by the Commission. In settling this case, the appellants were paid the premium differential for overtime worked during the strike.

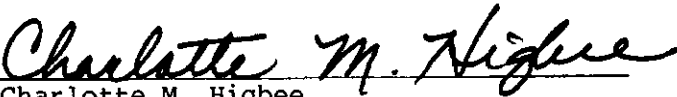
In the opinion of the Commission, the decision to pay the Olson appellants in compromise and settlement of their claim cannot be considered in legal effect as a decision not to authorize payment of these appellants, who were not parties to the Olson appeal. The only decision not to authorize pay for these appellants was made in 1977. Section 227.01(6), Stats., requires that to have standing in a contested case a person's "substantial interests" must be "adversely affected" by the agency action. In the opinion of the Commission no substantial interests of the appellants were adversely affected by the respondent's decision to authorize payment of the appellants in the Olson case as part of the settlement of that appeal.

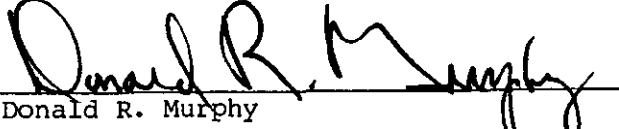
ORDER

This appeal is dismissed as untimely filed and for lack of standing.

Dated: March 24, 1980.

STATE PERSONNEL COMMISSION


Charlotte M. Higbee
Commissioner


Donald R. Murphy
Commissioner

AJT:jmg