

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 *
 LYNNE E. RASMUSSEN, *
 *
 Appellant, *
 *
 v. *
 *
 Secretary, DEPARTMENT OF HEALTH, *
 & SOCIAL SERVICES, *
 *
 Respondent. *
 *
 Case No. 79-353-PC *
 *
 * * * * *



DECISION
 AND
 ORDER

NATURE OF THE CASE

This matter is before the Commission on the respondent's objection to subject matter jurisdiction. The findings are based on matter which appears to be undisputed.

FINDINGS OF FACT

1. The appellant at all relevant times has been employed in the Office of Administrative Hearings and Rules, DHSS, in an Attorney 12 Hearings Examiner position which is included in the Wisconsin State Attorney's Association bargaining unit.

2. Her duties primarily have involved welfare matters, with probation and parole revocation, nursing home license revocation, and other matters as assigned and as necessary.

3. The appellant interviewed, as a prospective transferee, for another vacant Attorney 12 Hearings Examiner position in the Office of Administrative Hearings and Rules.

4. The appointing authority considered, in addition to the appellant, five certified candidates from an Attorney 12 Hearings Examiner register, and two other employees, in higher classifications, who had expressed an interest in a possible voluntary demotion.

5. The appellant interviewed for the vacant position because she had expressed an interest in doing primarily probation and parole revocation hearings rather than welfare hearings.

6. The appointing authority appointed someone other than the appellant to the vacant position, and this appeal ensued.

CONCLUSIONS OF LAW

1. Any Commission jurisdiction over this matter is superseded by the operation of s.111.93(3), Wis. Stats.

OPINION

The respondent makes a number of arguments in support of his objection to subject matter jurisdiction. Since the Commission is of the opinion that any jurisdiction is supplanted by operation of s.111.93(3), Wis. Stats., it does not deal with these other arguments.

Section 111.93(3), 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 relating to wages, hours, and conditions of employment whether or not the matters contained in such statutes are set forth in such labor agreement."

If the appellant were appointed to the vacant position, the transaction would have been a transfer. A transfer is denoted a management right by s.111.93(2), Wis. Stats. Pursuant to s.111.91(1), mandatory subjects of bargaining include:

"...wage rates...hours and conditions of employment, except as follows:"

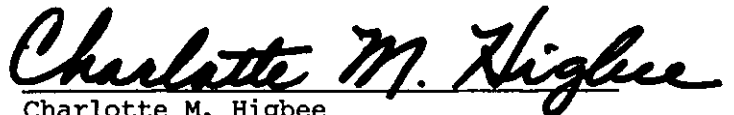
The section then provides that the employer is not required to bargain on management rights, except as to a grievance procedure for disciplinary actions referred to in s.111.90(3). The employer is prohibited from bargaining on certain subjects as set forth in s.111.91(2). This includes subjects also set forth in s.111.90 as management rights, e.g., promotions, but does not include transfers as prohibited subjects of bargaining. Thus, a transfer remains a management right and a permissive subject of bargaining, and is included in the subject matter, set forth in s.111.93(3), as to which the Commission's jurisdiction is superseded.

ORDER

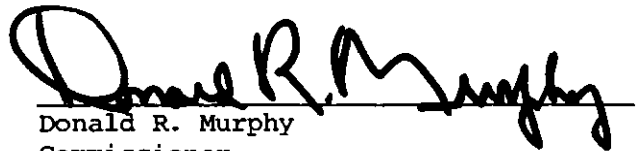
This appeal is dismissed for lack of subject matter jurisdiction.

Dated August 19, 1980

STATE PERSONNEL COMMISSION



Charlotte M. Higbee
Chairperson



Donald R. Murphy
Commissioner



Gordon H. Brehm
Commissioner

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Parties to appeal:

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Respondent: Secretary, DHSS
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