

\* \* \* \* \*

JEANNE SOPA,  
Appellant,

v.

Secretary, DEPARTMENT OF  
INDUSTRY, LABOR, AND HUMAN  
RELATIONS,  
Respondent.

Case No. 79-36-PC

\* \* \* \* \*

DECISION  
AND  
ORDER

NATURE OF THE CASE

The respondent has objected and moved to dismiss on the grounds of lack of subject-matter jurisdiction. The parties through counsel have filed briefs on the issues raised thereby. The basic facts relating to jurisdiction do not appear to be in dispute, and the following findings are made solely for the purpose of making a decision on jurisdiction.

FINDINGS OF FACT

1. At all relevant times prior to August 26, 1979, the appellant had permanent status in the classified service as a Typist 3.
2. The Typist 3 classification at all relevant times has been subject to collective bargaining agreements between the state and the Wisconsin State Employees Union (WSEU).
3. Commencing approximately December 1977, and until August 26, 1979, the appellant served in an acting capacity in a position classified first as Administrative Secretary 2-Confidential

and subsequently, following reallocation as a result of the clerical survey, as Secretary 1-Confidential.

4. Following competitive examination, the appellant received a permanent appointment to said position on August 26, 1979.

5. Following the filing of an appeal on February 5, 1979, and the holding of this matter in abeyance for a number of months pursuant to stipulation, the appellant informed the Commission in a letter dated October 23, 1979, that despite her appointment she wished to continue her appeal with respect to the question of back pay "for the months that I was worked out of classification...."

#### CONCLUSIONS OF LAW

1. The subject matter of this appeal is not appealable under §§230.44 or 230.45, Stats.
2. Any possible appeal is superseded by the operation of §111.93(3), Stats.
3. The Commission lacks jurisdiction over this appeal.

#### OPINION

The respondent argues that this appeal is barred by the provisions of §111.93(3), Stats., and that in any event there is no statutory basis for a direct appeal of the subject matter involved.

The subject matter of this appeal is the pay rate to which the appellant was entitled while she worked in an acting capacity in the position in question. This does not involve any function of the administrator that can be perceived by the Commission, nor can the Commission perceive any other basis for a direct appeal.

As to the effect of §111.93(3), the appellant argues in effect that she did not belong to a bargaining unit when she was performing the duties of a confidential position on an acting basis. The contractual bargaining units are based on the employees' classifications, see Art. II, §1. The appellant at all relevant times was classified as a Typist 3. The position in question could not be subject to a reallocation or reclassification solely because it was being filled on an acting basis, see §Pers. 3.02(2), (4), Wis. Adm. Code. The appellant was not removed from the bargaining unit because of her acting assignment.

Section 111.91(1), Stats., includes among matters subject to collective bargaining "salary adjustments upon temporary assignment of employees to duties of a higher classification...." The appellant argues that this provision could not apply here because this language only applies to higher classifications within the bargaining unit because:

"To assume otherwise requires that the bargaining unit can bargain with respect to the position of a Secretary 1-Confidential (Administrative Secretary 2-Confidential), contrary to Section 111.81(15) and 111.91 of the Wisconsin Statutes. No bargaining unit has that authority."  
Letter dated January 11, 1980.

The Commission does not agree with the premise of this argument. An agreement could provide that an employee serving in an acting capacity in a higher paid position in a classification outside the bargaining unit would be paid at the higher rate without bargaining on the pay rate for that classification.

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Since the appellant is a member of a bargaining unit and the subject matter of the appeal concerns "wages, hours and conditions of employment," any possible jurisdiction of an appeal is superseded by the operation of §111.93(3), Stats.

ORDER

This appeal is dismissed for lack of subject-matter jurisdiction.

Dated: Feb. 15, 1980. State Personnel Commission

Charlotte M. Higbee  
Charlotte M. Higbee  
Commissioner

AJT:arl  
2/13/80