

STATE OF WISCONSIN

PERSONNEL COMMISSION

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C.H. PRESTON, *

Appellant, *

v. *

Secretary, DEPARTMENT OF *

TRANSPORTATION, *

Respondent. *

Case No. 79-374-PC *

* * * * *

ORDER

This is an appeal of a denial of a request for leave of absence with pay due to injury. The respondent in a letter dated January 30, 1980, has moved to dismiss the appeal:

"The subject matter of the appeal involves the denial of a request for leave with pay due to injury. Mr. Preston is a member of a bargaining unit covered by a labor agreement between the State of Wisconsin and AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO. The terms of this labor agreement supersede any provisions of the civil service statutes and; therefore, the Commission lacks jurisdiction to hear an appeal under sec. 230.36(4), Stats., from a represented employee. Mr. Preston's proper action is to file a contractual grievance and, in fact, he has already done so (copy attached)."

The appellant has opposed this motion by letter dated February 19, 1980:

"While [respondent] may feel the current labor contract supersedes my right to appeal I feel the language 'may file a grievance' is neither binding nor mandatory and leaves me the option of pursuing the matter however I chose. I feel the appeal must be heard as stated in 230.45."

The labor agreement between AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO and the State, effective November 9, 1979

through June 30, 1981 (Security and Public Safety), provides under Art. 13, §16, Part 2, for filing of claims for benefits and that:

"If an employe's claim for benefits under this section is denied by the appointing authority, the employe may, within 30 calendar days, file an appeal at the third step of the grievance procedure provided under Article 4 of this agreement."

Section 111.93(3), Stats., provides as follows:

"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."


The effect of the contractual provision set forth above, with respect to this appellant, is to supersede the appeal route as set forth in §§230.36(4) and 230.45(1)(d), Stats.

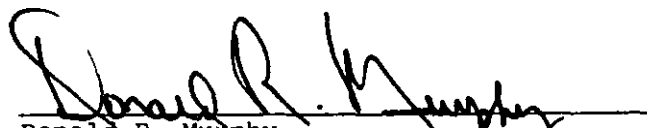
ORDER

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

Dated: March 24, 1980.

STATE PERSONNEL COMMISSION


Charlotte M. Higbee
Commissioner


Donald R. Murphy
Commissioner