

"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,"

and argues:

"...the language of s.230.45(1)(c) read together with s.111.93(3) clearly creates mutually exclusive remedies, one available to unionized employes and one available to non-union employes... i[f] [the assignment of job duties] is a condition of employment, then s.111.93(3) applies, and Mr. Teggatz has no appeal to the Commission. If, on the other hand, assignment of job duties is not a condition of employment, then it does not fall within the subject matter which is grievable under s.230.45(1)(c)." Respondent's letter-brief dated October 23, 1979.

The Commission agrees with this analysis. The appellant's argument in support of Commission jurisdiction rests primarily on the language of the APM (Administrative Procedures Manual) containing the uniform or standards for statewide employe grievance procedures. This procedure contains the following exclusion:

"This procedure shall not apply to employes covered by a collective bargaining agreement under s.111.89, Wis. Stats., for the subjects of collective bargaining set forth in s.111.91(1), Wis. Stats."

The appellant argues that since the assignment of job duties is a management right it is not a subject of collective bargaining and therefore can be the subject of a non-contractual grievance.

This argument may have had force in the context of s.16.05(7), Stats., (1975), the predecessor provision to s.230.45(1)(c), Stats., (1977). Section 16.05(7) merely provided that "The board may be designated as the final step in a state grievance procedure." This statute did not

supply any parameters for the subject matter of grievances appealable to the Commission. These were provided by the aforementioned APM which was issued pursuant to s. PERS 25.01, Wis. Adm. Code: "Such [departmental grievance] procedure shall meet standards established by the director."

However, the new statutory enactment, s.230.45(1)(c), does contain a limitation on the subject matter jurisdiction of the Commission over non-contract grievances by the language "relating to conditions of employment..." While this subsection goes on to say, "subject to rules of the secretary providing the minimum requirements and scope of such grievance procedure," such rules, when promulgated, could not impinge on the statutory provision by enlarging the category of appealable matter beyond "conditions of employment." In the absence of these rules the Commission has looked to the APM to provide the "minimum requirements and scope" of the grievance procedure, pursuant to the transitional provisions of chapter 197, Laws of 1977, s.129(49), see e.g., Kennel v. DOT, No. 78-263-PC (2/15/79). However, the restriction of the Commission's jurisdiction under s.230.45(1)(c) to matters relating to "conditions of employment" is part of the statute itself. Just as a rule promulgated by the secretary of the Department of Employment Relations could not abrogate that restriction, neither can the pre-existing grievance procedure promulgated pursuant to s. 16.05(7), Stats., (1975), and PERS 25.01, Wis. Adm. Code.

If the assignment of job duties is perceived as a management right, as argued by the appellant, then it does not involve a "condition of employment" (which is a mandatory subject of bargaining pursuant to

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s. 111.91(1), Stats. (1977), and pursuant to s.230.45(1)(c), Stats., (1977), is not subject to review by the Commission. If, on the other hand, the assignment of job duties was determined to involve a condition of employment, then the jurisdiction of the Commission is superseded or usurped by the provisions of s.111.93(3), Stats., (1977), cited above. See, e.g., Olbrantz v. Earl, Wis. Pers. Bd., No. 75-9 (3/25/79).

ORDER

This appeal is dismissed for lack of subject matter jurisdiction.

Dated Dec. 13, 1979,

STATE PERSONNEL COMMISSION

Charlotte M. Higbee
Charlotte M. Higbee
Commissioner