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Personnel

STATE OF WISCONSIN

CIRCUIT COURT

Commission DANE COUNTY

DEPARTMENT OF HEALTH & SOCIAL  
SERVICES, STATE OF WISCONSIN,

Petitioner,

vs.

MEMORANDUM DECISION

PERSONNEL COMMISSION, STATE  
OF WISCONSIN (John Hovel),

Case No. 79CV5630

Respondent.

The case is before the court for review of a final decision of the Wisconsin Personnel Commission, issued on October 2, 1979 in proceedings entitled John Hovel v. Department of Health and Social Services, Case No. 78-115-PC. The Commission held that the Department of Health and Social Services (hereafter DHSS) had erred in failing to establish Hovel's starting salary as an employee of the agency above the minimum rate for the position, and ordered a retroactive adjustment to his salary.

The facts are not in dispute. On October 12, 1976, Hovel applied for the position of Social Worker I, Probation and Parole Agent, with the Bureau of Probation and Parole (now the Bureau of Community Corrections). The position was advertised in the Career Candidate Bulletin of September 27, 1976, and the ad contained the following salary provision: "Starting pay between \$942 and \$1047 per month depending on prior training and experience of the person appointed." Hovel was hired for the position, effective December 13, 1976, and was informed by letter that his starting salary would be \$942 per month. A second letter followed,

informing Hovel that \$942 per month salary was the minimum of the pay range. Hovel accepted the position.

Shortly after Hovel assumed his employment with DHSS, he made inquiries with regard to the possibility of receiving a salary increase based on his training and experience. His immediate supervisor informed him that he knew of no way that an employee could have his starting pay adjusted after accepting the position and starting work. Apparently the supervisor was unaware of provisions in the civil service laws and regulations which permit hiring at a salary above the advertised minimum if the applicant's relevant qualifications exceed those required by the job description. Hovel had excellent grades in school which, under the rules, could have qualified him for a one-step increase over the minimum salary of \$942. In addition, he had two semesters of pertinent graduate study, each semester qualifying him for a one-half step increase over the minimum.

The authority for an agency to hire an employee at a salary above the minimum rate is set out in Wisconsin Administrative Code, sec. Pers. 5.02(1)(c). This "option" is primarily used to attract job applicants with one or more years of experience or those who are to be assigned to work in unpopular geographic areas. However, the option was not exercised by DHSS with respect to Hovel or any other Social Worker I hired from Hovel's panel. Then, in September, 1977, a Social Worker I was hired in the Milwaukee probation and parole office at one step above the minimum starting salary. This person's qualifications over

and above the designated minimum requirements for the job were largely similar to Hovel's, although the appointment was made from a different register or panel than the one from which Hovel was selected.

In February, 1978, Hovel submitted a complaint to the acting deputy bureau director requesting that either his salary be adjusted or his position be reclassified to that of Social Worker II. Hovel's request was denied, and he then filed a grievance alleging unfair treatment and misapplication of the policies and rules regarding hiring above the minimum. The grievance was denied on the grounds that hiring above the minimum is discretionary under sec. Pers. 5.02(1)(c), and that the decision to so hire can only be made at the time of appointment. On July 10 1978, Hovel appealed the denial to the Labor and Industry Review Commission, and the Commission took jurisdiction pursuant to sec. 230.45(1)(c), Stats. In the interim, Hovel's position was reclassified to Social Worker II. The matter was heard before Commissioner Durkin, as hearing examiner, on February 12, 1979. On May 9, 1979, Durkin issued a proposed decision dismissing Hovel's appeal on the merits. Hovel filed objections to the proposed decision and requested oral argument, which was held on June 28, 1979; and on October 2, 1979, the Commission issued its final decision and order reversing the hearing examiner's determination. The Commission found that Hovel had adequately demonstrated that DHSS was in error when it failed to establish his starting pay above the minimum salary and effectively ordered retroactive pay. DHSS then commenced this action to review the

Commission's action.

DHSS's brief raises a preliminary question of subject-matter jurisdiction. The powers and duties of the personnel commission are set out in sec. 230.45, Stats. Pursuant to that section, the Commission has the authority to conduct hearings on appeals under sec. 230.44, Stats., and to serve as the final-step arbiter in the state employee grievance procedure under 230.45(1)(c), Stats. There is no dispute that Hovel's invocation of the appeals process was not within the 30 days required by sec. 230.44(3), Stats. The Commission therefore assumed jurisdiction over the case pursuant to sec. 230.45(1)(c), Stats., which provides as follows:

(1) The commission shall:

\* \* \* \*  
\* \* \* \*

(c) Serve as final step arbiter in a state employe grievance procedure relating to conditions of employment, subject to rules of the secretary providing the minimum requirements and scope of such grievance procedure. (Emphasis added.)

DHSS argues that sec. 230.45(1)(c), Stats., does not grant the Commission subject-matter jurisdiction over the instant controversy because Hovel's grievance concerned his wage or salary. DHSS relies on the Commission's own precedent that the term "conditions of employment" contained in sec. 230.45(1)(c), Stats., does not include wages. See Johen Bartol v. Secretary, Department of Transportation, Case No. 79-309-PC (decided 6-27-80); Ronald C. Johnson v. Secretary, Department of Revenue, Case No. 78-245-PC

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(decided 6-27-80). As DHSS pointed out in its brief, the terms "wages," "hours" and "conditions of employment" have come to be considered as distinct "terms of art" in the field of labor-management relations. See, cf., secs. 111.33, 111.06(1)(c), 111.91(1), Stats. The instant statute, however, employs only the broad language "conditions of employment," with no clarifying language. The statute itself being unclear on the point, the court will accord great weight to the interpretation placed upon it by the agency charged with its administration. See Sinclair v. H&SS Department, 77 Wis.2d 322, 253 N.W.2d 245 (1977).

For the reasons stated, the Commission's decision and order will be reversed, the record remanded, and the Commission directed to dismiss Hovel's grievance for lack of subject-matter jurisdiction. Counsel for the department may prepare the appropriate order.

Dated at Madison, Wisconsin, this 29 day of January, 1981.

BY THE COURT:

  
WILLIAM EICH  
CIRCUIT JUDGE

cc: Maureen McGlynn  
Robert J. Vergeront