

* * * * *

PHILIP D. ANDERSON, *

Appellant, *

v. *

Secretary, DEPARTMENT OF AGRICULTURE, *

TRADE & CONSUMER PROTECTION, *

Respondent. *

Case No. 80-175-PC *

* * * * *

DECISION
AND
ORDER

NATURE OF THE CASE

This appeal is before the Commission on respondent's motion to dismiss for lack of subject-matter jurisdiction, filed February 9, 1981.

FINDINGS OF FACT

1. The appellant's appeal letter states in part as follows:

"The Grain Regulation Service has gone through a period of unusual expansion in the last three years. Many new employes have been able to advance very rapidly. Many of them have been promoted several times and have been on two or more training programs within the last two years. As a result, according to the Department of Agriculture, these individuals have never met the requirements of an original probationary period. These employes have worked for the state and been promoted within state service for one to three years without ever having served a probationary period. They have been denied step increases as provided for by the contract as a result. They have been given the other benefits allowed employes who have completed a probationary period, i.e., vacation, personal holidays, sick leave. Thus the grievance for arbitrary actions on the part of the employer.

For state employes to be treated in such a manner is certainly contrary to the intent and purpose of a probationary period and an injustice to those of us affected.

2. The third step contract grievance, a copy of which was attached to the aforesaid appeal letter, stated in part as follows:

"This is a group grievance on behalf of all employes of the Bureau of Grain Regulation who are permanent employes and have worked for more than six months and have not received

notice of completions of their original probationary period and the step increase provided for in Art. 12, Sec. 1, par (1)(B) of the agreement. It is alleged that management has acted arbitrarily in not releasing said individuals from probationary status and in not granting wage increases as provided for in Art. 12, Sec. 1, par. (1)(B). Management has acted arbitrarily in that they have interpreted the phrase 'first six months of an original probationary period,' found in Art. 12, Sec. 1, par (1)(B), differently than that same phrase found in Art. 13, Sec. 6., par. (1)(B) and Art. 13, Sec. 9, par.(2)(A). Management has acted arbitrarily by saying that for the purpose of wage increases a probationary period not the original first 6 months of employment, but for the purpose of benefits, it is the first six months of employemnt. "

3. The aforesaid grievance alleged a violation of Art. 12, Sec. 1, of the labor agreement, and was denied by the employer at the third step as follows:

"Grievance denied - no contract violation."

CONCLUSIONS OF LAW

1. The Commission lacks jurisdiction over this appeal under s.230.44(1)(d), Stats., to the extent that it is concerned with the requirement that employes serve a probationary period during their trining programs and after qualifying for the objective classification.

2. To the extent that this appeal involves the employes' pay rate following the first six months of employment, any potential Commission jurisdiction is superseded by the operation of s.111.93(3), Stats.

OPINION

In order for the Commission to hear an appeal under s.230.44(1)(d), Stats., there must be an allegation that the action appealed is "illegal or an abuse of discretion." While the Commission has dealt liberally with questions regarding the contents of pleadings or appeals, at a minimum in an appeal under s.230.44(1)(d), a conclusion of illegality or abuse of discretion ought at least to be arguable. Compare, Wing v. UW, Wis. Pers. Commn., 78-137-PC, (4/19/79).

To the extent that this appeal involves a charge that management failed to release certain individuals from probation at certain times, there has been no suggestion as to how this might have involved illegal action or an abuse of discretion. To the contrary, s.230.28(5), Stats., provides:

"An employe whose position is classified as 'trainee' shall be on a probationary period for the duration of the training program and may be separated during that period without the right of appeal, at the discretion of the appointing authority. Upon qualifying for the objective classification, the employe shall serve a probationary period as specified in sub. (1)."
(Emphasis supplied).

This subsection does not permit the employer or appointing authority any discretion at all; probationary periods are mandatory both during and after the training program.

To the extent that this appeal is concerned with the employes' eligibility for the step increase set forth in the contract, this is a matter involving "wages, hours and conditions of employment," and any potential jurisdiction of this Commission is superseded by s.111.93(3), Stats., which 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 relating to wages, hours and conditions of employment whether or not the matters contained in such statutes are set forth in such labor agreement."

The agreement in question, cited by appellant in the grievance, specifically covers the question of the relationship of the probationary period and the step increase about which the appellant complains. See, Agreement between AFSCME-Council 24, WSEU, AFL-CIO, and the State of Wisconsin, effective 11/9/79-6/30/81, Art. 12, Sec. 1, part 1:

"....each employe except those serving the first six months of an original probationary period shall receive an additional increase in base pay..."

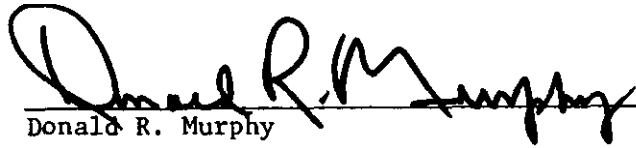
Anderson v. DOAT&CP
Case No. 80-175-PC
Page 4

ORDER

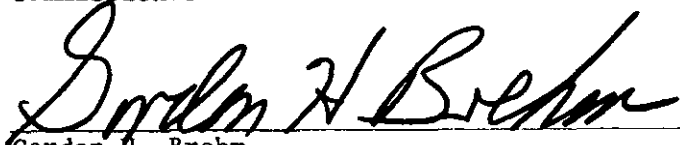
This appeal is dismissed for lack of subject-matter jurisdiction.

Dated April 9, 1981

STATE PERSONNEL COMMISSION



Donald R. Murphy
Commissioner



Gordon H. Brehm
Commissioner

mgd

Parties

Mr. Philip D. Anderson
Rt. 1, Box 2A
Wentworth, WI 54894

Dr. Gary Rohde
801 W. Badger Rd.
Madison, WI 53702