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 *
 MICHAEL COHEN,
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 Appellant,
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 v.
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 Administrator, DIVISION OF
 PERSONNEL
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 Respondent.
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 Case No. 81-208-PC
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DECISION
 AND
 ORDER

NATURE OF THE CASE

This matter is before the Commission on respondent's motion to dismiss on the ground that the appeal was not timely filed. The parties have filed written arguments. The findings which follow are based on material which appears to be undisputed.

FINDINGS OF FACT

1. On April 14, 1981, appellant was informed that his wages would be reduced due to the complicated effects of a library allocation survey.
2. Appellant filed a grievance on April 16, 1981, seeking restoration of his prior wage level. The grievance was denied at a subsequent step on May 11, 1981.
3. On May 19, 1981, the Commission received a letter from the appellant seeking restoration of his salary to its prior level.
4. The Commission takes official notice that the appellant's position is within a certified bargaining unit and is subject to the provisions of a labor agreement.

CONCLUSIONS OF LAW

This appeal was timely filed with the Commission in its role as final step arbiter in the state employe grievance procedures. However, the Commission lacks subject matter jurisdiction over the appeal.

OPINION

Respondent's motion to dismiss is premised on the conclusion that the decision being appealed from was a reallocation that appellant received notice of on April 14, 1981. However, appellant has shown that this matter was filed with the Commission pursuant to §230.45(1)(c), Wis. Stats., which requires the Commission to:

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

However, a question regarding wage levels is arguably not a "condition of employment" as required by statute. Even if the subject matter of the appeal is a condition of employment, the Commission's jurisdiction is superseded by the operation of §111.93(3), stats., which provides:

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 agreements.

See Teggatz v. State of Wisconsin (Personnel Commission), Winnebago County Circuit Court, No. 80 CV 1092 (1/8/82).

Therefore, this matter must be grieved as provided for in the applicable labor agreement, and the Commission is without jurisdiction.

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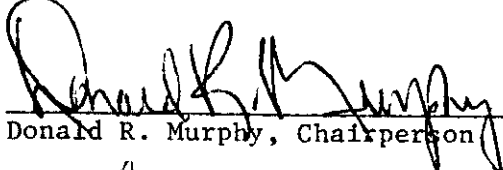
The appeal is dismissed for lack of subject matter jurisdiction.

Dated: Jan 28, 1982

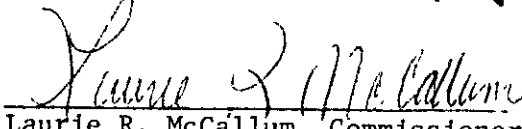
STATE PERSONNEL COMMISSION

Parties:

Michael Cohen
102 N. Franklin St., #310
Madison, WI 53703


Donald R. Murphy, Chairperson

Charles Grapentine
Division of Personnel
P.O. Box 7855
Madison, WI 53707


Laurie R. McCallum, Commissioner

KMS:eo