X

STATE OF WISCONSIN

#### PERSONNEL COMMISSION

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BLACK, et al,	*	
	*	
Appellants,	*	
	*	DECISION
v.	*	AND
,	*	ORDER
Administrator, DIVISION OF	*	
PERSONNEL,	*	
	*	
Respondent.	*	
	*	
Case No. 81-266-PC	*	
	*	
* * * * * * * * * * * * * *	*	

# NATURE OF THE CASE

This joint appeal is before the Commission on respondent's motion to dismiss for lack of subject matter jurisdiction. The parties have filed briefs on this question.

#### FINDINGS OF FACT

1. The appeal letter in this case states as follows:

We the above feel we are being denied equal pay for equal work. We are all Power Plant Operator 3's at the Walnut St. Heating Plant, U.W. Madison. On May 17, 1981, a newly promoted Power Plant Operator 3 began work at this plant; we find that this inexperienced operator is the (by far) highest paid operator 3 at this plant, and he is not even off probation!

We feel this is in violation of State Statutes Chapter 230 in that this consists of <u>un</u>-equal pay for equal work; in that some of us have more than five years experience as Operator 3's, we feel that this is especially inequitable. One of us was promoted to Operator 3 just before the new policy was implemented, and was still on probation when the policy went into effect.

We feel we are denied equal pay in violation of 230.09(2)(b), Wisconsin Statutes, and appeal to the Personnel Commission to restore equity.

#### OPINION

What this transaction (the determination of the pay of the newly-promoted Power Plant Operator 3) undoubtedly involves is an application of s. Pers 29.03(4), Wis. Adm. Code. This section of the administrative code, which

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was effective March 1, 1981, provides in part as follows:

"(b) In pay schedules where appropriate, on promotion an employe's present pay rate shall be increased to either 110% of the employe's present pay rate, or to the minimum of the new range, whichever is greater."

In order for this transaction to be appealable to the Commission, it must fall within the appealable matters set forth in ss230.44 and/or 230.45, stats. Therefore, the Commission will examine each of the potentially applicable subsections to determine if they provide any basis for jurisdiction.

Sec. 230.44(1)(a) and (b) provide for appeals of personnel decisions of the administrator of the division of personnel, taken either directly by the administrator or on a delegated basis.

The decision as to the salary to be paid following promotion is not that of the administrator or anyone acting in his place and stead on a delegated basis. By law, the authority to determine an employe's compensation is vested in the appointing authority, see s.230.06(1)(b), stats.; here, the Board of Regents. While it is true that the administrator was responsible for the promulgation, subject to the approval of the personnel board, of the rule in question, this does not make the transaction of determining the employe's salary any the less the legal action of the appointing authority.

Sec. 230.44(1)(c), stats., provides for the appeal of certain disciplinary matters. This appeal is not an appeal of a demotion, layoff, suspension, discharge, or reduction in pay.

Sec. 230.44(1)(d), stats., provides for appeals of personnel actions after certification which are related to the hiring process in the classified service and which are alleged to be illegal or an abuse of discretion. The determination of a promoted employe's salary is not "related" to the hiring process. The

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different points in the pay range due to longevity, performance awards, etc. What this controversy appears really to concern is whether s. Pers 29.03(4)(b), Wis. Adm. Code, is proper since it permits a newly-promoted employe to be paid at 110% of his or her previous salary, and since some pay ranges overlap, this may result in a new salary higher than an employe with more seniority in the higher classification. If it is felt that this rule is invalid, it can be challenged by a declaratory judgment proceeding in circuit court pursuant to s227.05, stats. If the appellants believe that the rules should be changed to increase the salary of employes promoted prior to the effective date of the rule, they could petition the administrator pursuant to s.227.15 stats., for such a change.

## ORDER

This	appeal	is	dismissed	for	lack	οĒ	subject	matter	jurisdiction.	
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Dated: 100 . (4

1981

STATE PERSONNEL COMMISSION

AJT:ers

DONALD R. MUR Chairperson

### Parties

George Black
William Black
Allan Morschauser
Ananda Sathasivam
Bernard Van Alstine
505 N. Walnut St.
Madison, WI 53706

Charles Grapentine 149 E. Wilson St. Madison, WI 53702 Black, et al, v. DP Case No. 81-266-PC Page Four

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