STATE OF WISCONSIN PERSONNEL COMMISSION

DONALD WELCH,

Appellant,

v.

Secretary, DEPARTMENT OF HEALTH AND SOCIAL SERVICES,

Respondent.

Case No. 81-272-PC

DECISION AND ORDER

NATURE OF THE CASE

This is an appeal pursuant to s. 230.44(1)(d), Wis. Stats., from the action of the Mendota Mental Health Institute, having to do with the salary established for the appellant upon demotion in lieu of layoff. At the pre-hearing conference, the respondent objected to subject-matter jurisdiction on the ground that pursuant to s. 111.93(3) the collective bargaining agreement supersedes Chapter 230 provisions. The parties agreed to submit statements of fact and submit briefs upon the jurisdictional issue. The findings below are based on what appears to be undisputed matter.

FINDINGS OF FACT

1. The appellant, Donald Welch, was employed as a Meatcutter 2 at the Mendota Mental Health Institute.

2. In late 1980, the appellant was informed that the Meatcutter's position was being eliminated.

3. In March, 1981, the appellant was further informed by the Mendota Mental Health Institute that his salary would be red-circled if he chose to demote, in lieu of layoff, to the position of Stock Clerk 2.

4. However, in May, 1981, the appellant was informed that his salary would not be red-circled unless he elected to bump downward into a classification in which permanent status had previously been acquired, which did not include Stock Clerk 2.

5. This notification was made prior to the appellant's acceptance of the voluntary demotion to the Stock Clerk 2 position.

6. At all relevant times, the appellant's position has been part of a certified bargaining unit represented by AFSCME, Council 24, AFL-CIO, and a collective bargaining agreement between the union and the state has been in effect.

CONCLUSIONS OF LAW

1. The Personnel Commission does not have subject-matter jurisdiction over the appeal due to s. 111.93(3), Wis. Stats.

OPINION

The Commission has subject-matter jurisdiction to hear cases relating to layoffs by an appointing authority as per s. 230.44(1)(d), Wis. Stats. This section empowers the Commission to hear such appeals when prosecuted by employes with permanent status in class. It is undisputed that the appellant has permanent status as a Meatcutter 2. It is also clear that the appellant is a member of a bargaining unit represented by the AFSCME, Council 24, Wisconsin State Employes Union. AFSCME has a labor agreement with the State of Wisconsin which has been in full force and effect at all times material to this appeal. Articles VII and VIII enumerated the employe's transfer and bumping rights in lieu of layoff.

Section 111.93(3), Wis. Stats. states clearly that provisions of a state-union labor agreement supersede civil service provisions related to wages, hours and conditions of employment.

> "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 agreement."

In order to determine whether the instant case falls within s. 111.93(3), the Commission must determine whether this case involves "wages, hours, and conditions of employment," as that term is used in s. 111.93(3), Wis. Stats.

The Commission's predecessor, the State Personnel Board, in Olbrantz v. Earl, Case No. 75-9, pg. 3, held that a layoff constituted a "condition of employment."

The determination of an employe's salary upon a demotion in lieu of layoff constitutes "wages, hours, and conditions of employment." Section 111.91(1)(a), Wis. Stats. ("Subjects of Bargaining"), provides in part that " . . . procedures for the adjustment or settlement of grievances or disputes arising out of any type of disciplinary action referred to in s. 111.90(3) shall be a subject of bargaining." Section 111.90(3), Wis. Stats., includes the following enumeration of disciplinary actions:

> "Suspend, demote, discharge or take other appropriate disciplinary action against the employe for just cause, or to lay off employes in the event of lack of work or funds . . ."

See also Dobbins v. DHSS, Wis. Pers. Com., No. 81-91-PC (6/3/81), which cited an attorney general's opinion OAG 65-78 (unpublished) to the effect that raised hiring rate and hiring above the minimum practices were not prohibited subjects of bargaining.

Since the Commission lacks jurisdiction over this matter, it will not reach the argument that the department is bound by its initial indication that the appellant's salary would be red-circled. However, it might be noted that it appears that this case is substantially different from Porter v. DOT, No. 78-154-PC (5/14/79), cited by the appellant. In that case, the Commission held that equitable estoppel prevented the respondent from withdrawing a wage offer that the employe had relied on in leaving another job and accepting the appointment from DOT. Here, the respondent notified the appellant of the mistaken information regarding his starting salary before he accepted the demotion in lieu of layoff. When he did accept the demotion, he was aware that his salary would not be red-circled, so he was not acting in reliance on the respondent's earlier, erroneous representation to that effect.

ORDER

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

Dated: October 30, 1981

STATE PERSONNEL COMMISSION

DONALD R. MURPHY
Chairperson

CHARLOTTE M. HIGBEE
Commissioner

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