STATE OF WISCONSIN PERSONNEL COMMISSION

SHERRY LEICK,

Appellant,

v.

Secretary, DEPARTMENT OF TRANSPORTATION,

Respondent.

Case No. 81-305-PC

DECISION AND ORDER

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

This appeal concerns the determination of appellant's salary following a promotion from Motor Vehicle Representative 1 to Motor Vehicle Representative 2. The appellant's appeal letter, which was filed on July 9, 1981, states in part as follows:

> "On 4/20/81 I accepted a promotion to an MVR 2. I was informed I would receive a 10% pay increase since it was greater than the base pay. The agreed upon salary would be 5.23 + 10% = 5.753. I also received a letter acknowledging my promotion and rate of pay being 5.753.
>
> On 5/26/81 I was informed a mistake had been made concerning my pay. I was informed that since I was serving a promotional probation when I accepted the MCR 2 position the 10% should have been calculated from 5.074 as a CA 1. This was a deduction of .171 per hour plus $26 of overpayment deducted from my next paycheck ..."

It appears to be undisputed that the appellant's positions here in question are and have been part of a certified bargaining unit and that there has been a contract in effect between the state and the union representing that unit.

Sec. 111.93(3), stats., 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 related to wages, hours, and conditions of employment, whether or not the matters contained in such statutes are set forth in such labor agreement."

The need for this statute is apparent when one considers that there are many civil service and other statutes which govern various aspects of wages, hours, and conditions of employment which are subject to resolution by the collective bargaining process. This statute provides that in these areas the collective bargaining process has priority and supersedes these statutes. Thus, for example, s.230.44(1)(c), stats., provides that an employe with permanent status in class may appeal a discharge to the Personnel Commission. However, procedures for grieving such disciplinary matters are mandatory subjects of bargaining, see s.111.91(1)a), stats., so a represented employe's right to appeal a discharge to the Commission would be superseded by the operation of s.111.93(3), stats. See, e.g., Reissmann v. DILHR, Wis. Pers. Commn., No. 78-78-PC (2/28/79).

Dobbins v. DHSS, Wis. Pers. Commn., No. 81-91-PC (6/3/81), involved an employe's appeal of the department's determination of his starting salary upon his initial appointment to the state classified service. The Commission held that the question of the amount of the employe's starting salary constituted "wages, hours, and conditions of employment" as set forth in s.111.93(3), stats., and so its jurisdiction was superseded by operation of that subsection. The Commission relied heavily in reaching that conclusion on an attorney general's opinion (OAG 65-78, unpublished) in which he addressed the question of whether the matters of "raised hiring rates", pursuant to sPers 5.02(1)(b), Wis. Adm. Code, and "hiring above the minimum", pursuant to sPers 5.02(1)(c), Wis. Adm. Code, were prohibited subjects of bargaining pursuant to s.111.9.(2)(b) 1.,

stats., which provides that the employer is prohibited from bargaining on:

> "(b) Policies, practices and procedures of the civil service merit system relating to:
>
> 1. Original appointments and promotions specifically including recruitment, examinations, certification, appointments, and policies with respect to probationary periods."

The attorney general stated in part as follows:

> "I am of the opinion that the 'raised hiring rate' and 'hiring above the minimum' practices, as utilized by the administrator in connection with recruitment, are not excluded from the subjects of collective bargaining under s.111.91(2)(b)1., Wisconsin Statutes. Whereas such practices are related to 'original appointments' and 'recruitment', they are primarily concerned with compensation, wage rates, and salary schedule adjustments ... the power over recruitment primarily relates to locating a fit person by examinations, certification, selection methods, and probationary periods."

If decisions to utilize a raised hiring rate or to hire above the minimum are not prohibited subjects of bargaining, it is difficult to see how the determination of beginning salary on promotion can be placed in that category. It would seem that the decision to utilize a raised hiring rate or to hire above the minimum is more closely related to the prohibited subjects of bargaining of staffing and selection processes than the determination of salary following promotion. If the subject matter of this appeal is <u>not</u> a prohibited subject of bargaining, then it is bargainable and constitutes "wages, hours, and conditions of employment" as that term is used in s.111.93(3), stats.

ORDER

This appeal is dismissed for lack of subject matter jurisdiction, and the labor agreement supersedes the Commission's jurisdiction over this matter.

Dated: Nov. 19, 1981 STATE PERSONNEL COMMISSION

DONALD R. MURPHY
Chairperson

AJT:ers

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