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 \*  
 DAVID FOX, \*  
 \*  
                   Appellant, \*  
 \*  
 v. \*  
 \*  
 Secretary, DEPARTMENT OF \*  
       NATURAL RESOURCES, \*  
 \*  
                   Respondent. \*  
 \*  
 Case No. 81-381-PC \*  
 \*  
 \* \* \* \* \*

DECISION  
AND  
ORDER

This matter is before the Commission on an appeal of a non-contractual grievance pursuant to §230.45(1)(c), stats. The respondent has moved to dismiss on the grounds of lack of subject matter jurisdiction, and the parties have filed written arguments on the motion.

The appellant submitted copies of his grievance with his appeal letter. This grievance involves a dispute between Mr. Fox, an unrepresented employe, and his immediate supervisor. The grievance alleges that this supervisor used abusive language against Mr. Fox, in the presence of co-employes. Mr. Fox was unsatisfied with the agency's response to this matter at the third step, which was in essence as follows:

Your supervisor, Mr. Elmer Dorava, has been advised to control his language when dealing with you and to provide constructive criticism when there is need to for criticism. In addition, he has been advised to confine his remarks concerning your conduct to his supervisor and not to share these with other employes.

I expect you and Mr. Dorava to concern yourselves with providing the necessary climate which will lead to successful completion of the tasks you are involved in.

In his appeal letter to the Commission, filed September 24, 1981,  
Mr. Fox stated in part as follows:

I strongly believe an apology in writing,  
or in the presence of Mr. Singsime and Mr.  
Emmerich is necessary and not too much to  
ask as relief of such verbal abuse.

Section 230.45(1)(c), stats., provides that this Commission "Serve  
as final arbiter in a state employe grievance procedure relating to condi-  
tions of employment, subject to rules of the Secretary providing the mini-  
mum requirements and scope of such grievance procedure." (emphasis added)

The term "conditions of employment" is not defined statutorily. In  
Bragg v. DNR, No. 80-383-PC (6/25/81), the Commission decided that "condi-  
tions of employment" as used in §230.45(1)(c), stats., has the same mean-  
ing as the term as used in chapter 111, Subchapter V, where wages, hours  
and conditions of employment are synonomous with bargainable subjects.  
That is, §111.91(1) requires that there be bargaining on wages, hours, and  
conditons of employment, with the exception of management rights, as set  
forth in §§111.91(1)(a), and 111.90, and prohibited subjects of bargaining,  
as set forth in §§111.91(1)(b) and 111.91(2). Therefore, if a matter is  
not included in the enumerations in §§111.91(1)(a) or 111.91(2), then it  
is a bargainable subject.

In this case, the subject matter of the grievance concerns a dispute  
between the appellant and his supervisor and management's reaction or  
handling of the problem. Management's response at the third step was un-  
satisfactory to the appellant, who believes that a written apology, or an  
apology in the presence of his co-workers, should be required of the  
supervisor.

The decision whether, under these circumstances, to counsel the appellant's supervisor or to require a written or other type of apology, appears to the Commission to fall within the definition of management rights as set forth in §111.90(2):

(2) Manage the employes of the agency; hire, promote, transfer, assign or retain employes in positions within the agency; and in that regard establish reasonable work rules. (emphasis added)

It would seem that the question of what directions to provide a supervisor for dealing with his subordinates is an integral part of managing the employes of an agency.

A further reason why this matter is not within the Commission's jurisdiction is found in Wing v. UW, Wis. Pers. Comm. No. 78-137-PC (4/19/79). In that case, the Commission noted that in the absence of the promulgation of rules by the Secretary of DER pursuant to §230.45(1)(c), the transitional provisions of Chapter 196, Laws of 1977, §129(4q), require that pre-existing rules remain in effect, and that therefore it is necessary to look to § Pers 25.01, Wis. Adm. Code, and this includes the Administrative Procedures Manual (APM) setting forth the (then) director of the bureau of personnel's standards for agency grievance procedures. Pursuant to the APM, appeals to the fourth step can only be had of:

Complaints which allege that an agency has violated through incorrect interpretation or unfair application:

1) a rule of the Director, State Bureau of Personnel [now Administrator, Division of Personnel] or a Civil Service Statute (§16.01-16.38, Wis. Stats.) [now §230.05-230.46, Subchapter II of Chapter 230], or

2) a function where the Director [Administrator]...expressly delegated his authority to the appointing officer...


In this case, there has been no suggestion, nor does the Commission understand, that the subject matter of this grievance involves a delegated authority of the Administrator. Furthermore, the Commission cannot perceive what provision of the civil service code or rules arguably has been violated by the respondent in this matter. The appellant in his brief states in a conclusory fashion that there is an arguable violation of the civil service law, but cites no rule or statute allegedly violated.

For these reasons, the Commission concludes that it lacks jurisdiction over the subject matter of this appeal and that it must be dismissed.


ORDER

This appeal is dismissed for lack of subject matter jurisdiction.

Dated: Feb 9, 1982 STATE PERSONNEL COMMISSION

  
DONALD R. MURPHY, Chairperson

  
LAURIE R. McCALLUM, Commissioner

  
JAMES W. PHILLIPS, Commissioner

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