

\*\*\*\*\*  
 \*  
 MUELLER et al., \*  
 \*  
 Appellants, \*  
 \*  
 v. \*  
 \*  
 Secretary, DEPARTMENT OF \*  
 HEALTH AND SOCIAL SERVICES, \*  
 \*  
 Respondent. \*  
 \*  
 Case Nos. 81-92, 93, 94, 95, \*  
 97, 102, 105, 107, \*  
 108, 113, 116, 170, \*  
 191, 193, 198, 199, \*  
 200, 201, 202, 203, \*  
 204, 212, 213, 214, \*  
 215, 218, 230, 231- \*  
 112, 206-PC \*  
 \*  
 \*\*\*\*\*

DECISION  
AND  
ORDER

NATURE OF THE CASE

This is a consolidated appeal regarding relative levels of back pay. At the prehearing conference, respondent moved that the Commission dismiss the appeals for lack of subject matter jurisdiction. The parties have filed letter briefs.

FINDING OF FACT

A representative appeal letter in this matter states as follows:

"I am an Officer III employed by the Department of Health and Social Services at the Green Bay Correctional Institute. As a result of the recent promotions, the newer Officer III's are making more money than I am. I feel that this violates my right under Section 230, Wis. Stats. I am therefore appealing this inequity of pay to the Commission."

CONCLUSION OF LAW

The Commission lacks subject-matter jurisdiction over these appeals.

*Original*

OPINION

At the prehearing conference in this matter, respondent raised a series of objections to any assertion of jurisdiction by the Commission:

- "1. If the appeal concerns appellants' salaries, it is untimely.
2. If the appeal concerns appellants' salaries, it should be grieved under collective bargaining agreement grievance procedures.
3. If the appellants are appealing action concerning wages of other employes, appellants lack standing.
4. The action taken is not a delegated action."

The appellants responded by arguing:

- "1. The appeals are timely because they allege violations of Chapter 230, Wisconsin Statutes, which did not occur until appellants were promoted.
2. The appeals involve WAC Chapter PERS and not provisions of the collective bargaining agreement."

The Commission recently dealt with a case which had a substantially identical issue, Black et al. v. DP, 81-266-PC (11-19-81). There the appellants were Power Plant Operator 3's who were being paid less than a newly promoted and inexperienced PPO 3. Appellants argued that they were denied equal pay for equal work. In Black, the Commission identified certain language of s. Pers 29.03(4)(b), Wisconsin Administrative Code, as the source of the dispute.

"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."

The Commission then examined each of the possible sources of jurisdiction within ss. 230.44 and .45, Wis. Stats., before determining that it lacked subject-matter jurisdiction over the appeal:

"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), Wis. 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), Wis. Stats., provides for appeals 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), Wis. 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 hiring process has to do with the process whereby an appointment to a position is made by the appointing authority from among those certified. The determination of starting salary of a promoted employe is in fact not subject to any exercise of discretion by the appointing authority, but rather, is determined following promotion by application of the rules set forth in s. Pers 29.03(4), Wis. Adm. Code.

The other possible bases of jurisdiction are not applicable. This case does not involve a complaint of discrimination (defined as discrimination on the basis of "age, race, color, handicap, sex, creed, national origin, ancestry, arrest record, or conviction record") under 111.33(2), Wis. Stats., which the Commission hears pursuant to s. 230.45(1)(b), Wis. Stats. It is not an appeal under s. 230.45(1)(c), Wis. Stats., as there has been no allegation that this case was processed as a non-contratual grievance, nor is it an appeal of a hazardous employment injury denial under s. 230.45(1)(e), Wis. Stats. This is not a review of a decision of an impartial hearing officer under s. 230.45(1)(f) and 111.91(3), Wis. Stats.

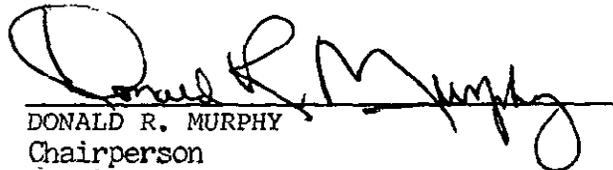
As to the current appeals, the appellants have failed to identify an appropriate basis for asserting that the Commission has jurisdiction. No arguments have been offered that would tend to undercut the Commission's decision in Black.

ORDER

These appeals are dismissed for lack of subject-matter jurisdiction,  
thereby granting respondent's Motion to Dismiss.

Dated: Dec 16, 1981

STATE PERSONNEL COMMISSION

  
DONALD R. MURPHY  
Chairperson

KMS:nwb

Parties

Mr. John Mueller, 1347 Liberty Street, Green Bay, WI 54304  
Mr. Merlyn W. Rosenow, 1160 Forest Grove, Green Bay, WI 54303  
Mr. Greg Stevens, Route #1, Little Suamico, WI 54141  
Mr. James Storm, 1493 McCormick, Green Bay, WI 54301  
Mr. Robert Kroom, Route 3, Box 110, Waupun, WI 53963  
Mr. G.J. Renard, 2445 Rosedale, Green Bay, WI 54304  
Mr. Chris E. Cira, 1211 North 13th Street, Milwaukee, WI 53205  
Mr. Jeffrey Farber, 1510 Ponderosa Avenue, Green Bay, WI 54304  
Mr. R. Showers, Local 178, Council 24, P.O. Box 124, Waupun, WI 53963  
Mr. William R. Wright, 1624 Nancy Avenue, Green Bay, WI 54303  
Mr. Arlin Johnson, Route #2, Seymour, WI 54165  
Mr. Ronald R. Schroeder, Lark Road, Route 3, Denmark, WI 54208  
Mr. Brian L. Tierny, Apt #1, 2255 Eastman Ave., Green Bay, WI 54302  
Mr. Fred Nelson, Wis. Corr. Inst., South Madison Street, Waupun, WI 53963  
Mr. Craig Bresser, Wis. Corr. Inst., South Madison Street, Waupun, WI 53963  
Mr. Thomas K. Dunn, 405 South Grove Street, Waupun, WI 53963  
Mr. Timothy D. Berg, Wis. Corr. Inst., South Madison Street, Waupun, WI 53963  
Mr. Mark Bloedou, Wis. Corr. Inst., South Madison Street, Waupun, WI 53963  
Mr. John G. Sawf, Jr., Wis. Corr. Inst., South Madison Street, Waupun, WI 53963  
Mr. Alvin Krueger, Wis. Corr. Inst., South Madison Street, Waupun, WI 53963  
Mr. Todd McCarthy, Wis. Corr. Inst., South Madison Street, Waupun, WI 53963  
Mr. John T. Anderson, Wis. Corr. Institute, South Madison Street, Waupun, WI 53963  
Mr. John Cunningham, Wis. Corr. Inst., South Madison Street, Waupun, WI 53963  
Mr. Noel L. Stubbe, Wis. Corr. Inst., South Madison Street, Waupun, WI 53963  
Mr. Gregory Hilt, Wis. Corr. Inst., South Madison Street, Waupun, WI 53963  
Mr. Clarence Toll, Jr., Wis. Corr. Inst., South Madison Street, Waupun, WI 53963  
Mr. Merle A. Strelow, Wis. Corr. Inst., South Madison Street, Waupun, WI 53963  
Mr. Bruce B. Hills, Wis. Corr. Inst., South Madison Street, Waupun, WI 53963  
Mr. Francis Garro, Wis. Corr. Inst., South Madison Street, Waupun, WI 53063  
Mr. Raymond Abitz, Wis. Corr. Inst., South Madison Street, Waupun, WI 53963  
Mr. Donald Percy, 663, 1 W. Wilson St., Madison, WI 53702