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 *
 PHIL MILLER *
 *
 Appellant, *
 *
 v. *
 *
 Secretary, DEPARTMENT OF *
 REVENUE, *
 *
 Respondent. *
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 Case No. 82-196-PC *
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DECISION
 AND
 ORDER

This is an appeal pursuant to §230.45(1)(c), Stats., of the denial of a non-contractual grievance at the third step. The respondent has objected to subject matter jurisdiction and the parties have filed briefs. The operative facts relating to jurisdiction do not appear to be in dispute.

The difference between the parties that generated this appeal and that constitutes its subject matter is the termination by the department of the arrangement by which Mr. Miller worked 8 months each year and had 4 months off. In its place, the department offered him the alternatives of going either to full-time or more traditional part-time status--i.e., working 66% of the time, but coming to work every week for 4 or 5 days.

Pursuant to §230.45(1)(c), Stats., the Commission is to:

Serve as final step arbiter in a state employe grievance
 procedure relating to conditions of employment, subject
 to rules of the secretary providing the minimum require-
 ments and scope of such procedure.

In DHSS v. Personnel Commission (Hovel), Dane County Circuit Court,
 No. 79CV5630 (1/29/81), the court stated that "...the terms 'wages,'
 'hours' and 'conditions of employment' have come to be considered as
 distinct 'terms of art' in the field of labor-management relations..." and

held that the term "conditions of employment" as used in §230.45(1)(c), Stats., did not include "wages."

In Johnson v. DHSS, No. 81-450-PC (6/10/82), the Commission held that, by the application of similar reasoning, if the subject matter of an appeal involved "hours," as opposed to "conditions of employment," it would not be cognizable under §230.45(1)(c), Stats., as a "condition of employment."

The term "hours" has not been statutorily defined. However, a general definition of the term as it has come to be used in the field of labor-management relations is set forth in State College Ed. Assn. v. Pennsylvania Labor Rel. Bd., 306 A.2d 404, 412, 9 Pa. Commonwealth 229 (1973):

How many hours one is going to work; what periods of time will be covered; the starting time; and the rest or time out from work periods are all included in the commonly understood word 'hours.'

The basic subject matter of the case before the Commission involves a dispute over whether the appellant, Mr. Miller can work 8 months on, 4 months off, as opposed to, for example, 5.35 hours on, 2.65 hours off. This is a dispute over the appellant's work schedule, and is more properly considered a matter of hours rather than a matter of conditions of employment.

The appellant has argued that the respondent's action violated certain statutory provisions and an alleged contract between the respondent and him. These arguments run to the merits of the grievance and cannot be addressed by the Commission if it lacks jurisdiction over the subject matter.

The appellant also makes the argument that the department never raised any jurisdictional objection to its processing of this grievance. However, if the Commission lacks subject matter jurisdiction, it is completely

without authority over the appeal, and therefore, it frequently has been noted that such objections can be raised at any time, see, e.g., Morgan v. Knoll, Wis. Pers. Bd. No. 75-204 (5/25/76). Furthermore, since §230.45(1)(c), Stats., addresses only the authority of the Commission to hear a grievance (essentially at the fourth step), no question of the Commission's subject matter jurisdiction would arise until after the third step.

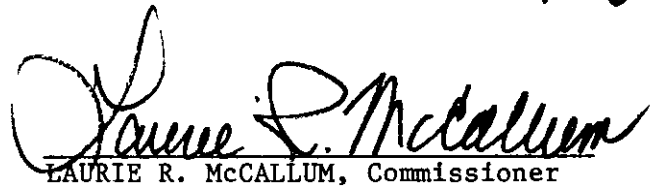
ORDER

This appeal is dismissed for lack of subject matter jurisdiction.

Dated: March 17, 1983 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson

AJT:jmf


LAURIE R. McCALLUM, Commissioner


JAMES W. PHILLIPS, Commissioner

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