

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 3

WINNEBAGO COUNTY

PATRICIA MATULLE

Plaintiff

vs.

DECISION  
82 CV 207

STATE PERSONNEL COMMISSION

Defendant

The court has heard further argument on November 18, 1982, by conference call. It appears that counsel, and the court, are satisfied that the change of law resulting from enactment of s. 230.34(1)(am) and (ar) is inapplicable to a collective bargaining agreement in effect at the time of the effective date of the change.

S. 111.93(3) provides that the provisions of a collective bargaining 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 court will take judicial notice of the agreement, which is a public document. That agreement contains two provisions which determine the action. Article III, paragraph 39(4) at page 20, defines as a management right "to suspend, demote, discharge or take other appropriate disciplinary action against employees for just cause." Despite the euphemistic denomination of the action taken by the employer, it did in fact result in discharge and constituted a disciplinary action against the plaintiff.

Article IV provides a grievance procedure for the enforcement of an employee's rights under the agreement. Action was taken under that grievance procedure, but the employer, acting under the mistaken impression that s. 230.34(1)(ar) affected the employee's rights under the agreement, returned the grievance without response.

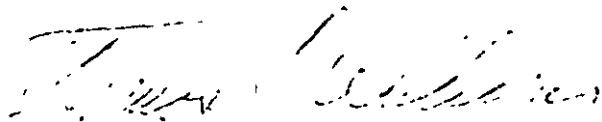
The court concludes that the agreement provides a procedure for resolution of disputes as to whether there was a

violation of a specific provision of the Agreement. Whether there was "just cause" for the employer's action constitutes such a dispute, and the procedure for enforcement set forth in the agreement, under s. 111.93(3), supersedes the statutory provision for review by defendant under s. 230.44(1)(c).

The court concludes that the Commission was without jurisdiction, whatever rights may be asserted under the grievance procedure, and the action shall be dismissed.

Dated this 19 day of November, 1982.

BY THE COURT:



Thomas S. Williams  
Circuit Judge, Br. III