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 CHARLES B. SWENSON,
 Appellant,
 v.
 Secretary, DEPARTMENT OF
 AGRICULTURE, TRADE AND
 CONSUMER PROTECTION,
 Respondent.
 Case No. 83-0152-PC
 * * * * *

DECISION
AND
ORDER

This appeal was filed as an appeal from an involuntary demotion. The respondent raised a jurisdictional objection, arguing that the appeal was not timely filed. Both parties filed briefs. The following findings of fact are based on documents in the record and appear to be undisputed.

FINDINGS OF FACT

1. Prior to March 11, 1983, the appellant was employed as a Plant Industry Inspector 2 (pay range 5-10) with respondent department.
2. In a letter dated March 11, 1983, the department offered the appellant a position of Seed Analyst 1 (pay range 6-09), as a result of a physician's recommendation.
3. In a letter dated March 17, 1983, the appellant accepted the offer.
4. The appellant subsequently grieved the personnel action through the contractual grievance procedure. On May 2, 1983, the appellant submitted his grievance at the third step of the procedure, stating in part:

This demotion is a violation of Article 4, Section 9. Because the demotion is not for just cause, it is also in violation of Article 11,

Section 1 and also in violation of Wis. Statutes 111.31 through 111.37 as discrimination against handicapped.

The grievance was denied at the third step on June 22, 1983.

5. On July 25, 1983, the appellant filed a letter of appeal with the Commission, stating in part, as follows:

I wish to APPEAL the Department of Agriculture, Trade, and Consumer Protections action of involuntarily demoting me from Plant Industry Inspector 2 (pay range 10) to Seed Analyst (pay range 9). This involuntary demotion was in violation of Wisconsin Statutes, section 230.34(1) and section 230.37(2) and Pers. 17.04.

6. The Plant Industry Inspector 2 classification is in the Security and Public Safety collective bargaining unit. The Seed Analyst Classification is in the Technical collective bargaining unit. The contract covering both bargaining units provides that grievances not settled at the third step "may be appealed to arbitration." Article IV, Section 2.

CONCLUSION OF LAW

The Commission lacks subject matter jurisdiction over this appeal.

OPINION

The Personnel Commission has repeatedly held that it lacks authority to review such transactions as discharges, demotions, and suspensions where the employe involved is within a collective bargaining unit with a bargaining agreement in force. This conclusion is based upon the language of §111.93(3), Stats.;

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.

and §230.34(1)(ar), Stats;

[F]or employes in a certified bargaining unit covered by a collective bargaining agreement, the determination of just cause and all aspects

of the appeal procedure shall be governed by the provisions of the collective bargaining agreement.

Also see Lott v. DHSS & DP, 79-160-PC (3/24/80); Walsh v. UW, 80-109-PC (8/19/80); Rasmussen v. DHSS, 81-434-PC (2/9/82)

In the present case, the appellant was at all times within a collective bargaining unit. He grieved his demotion under the terms of the contract through the third step before he filed his appeal with the Commission. The Commission has no authority to serve as the fourth step in the contract grievance procedure although it does have such authority as to some matters processed through the non-contract grievance procedure. See §230.45(1)(c), Stats.

In the absence of any statutory authority to hear this appeal, it must be dismissed.

ORDER

This matter is dismissed due to lack of subject matter jurisdiction.
Dismissal of this appeal has no effect on Case No. 83-0091-PC-ER which is
pending before the Commission.

Dated: January 4, 1984

STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson


LAURIE R. McCALLUM, Commissioner

KMS:jmf
JPDO4


DENNIS P. MCGILLIGAN, Commissioner

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