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SANFORD W. BLOOM,

Appellant,

v.

Secretary, DEPARTMENT OF
HEALTH AND SOCIAL SERVICES,

Respondent.

Case No. 85-0026-PC

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DECISION
AND
ORDER

This matter was filed with the Commission as a non-contractual grievance. The letter of appeal stated in relevant part as follows:

With this letter I am filing a formal Departmental Non-Contractual Grievance. The procedure for this grievance is described on page 53 of The Department of Health and Social Services Employee Handbook.

I am a represented employe, although not a dues paying member of the Union. I am using this route for filing my grievance because management has clearly stated that the issue I am grieving is not one which is bargainable or covered by the contract. I was informed of this prior to filing a contract grievance at the third step, and at the first two steps, management has insisted that my issue lies outside of the contract. Therefore, my only recourse is to file this complaint with your office.

I am contending that certain conditions of my employment are discriminatory, lacking in fairness, and in general represent an unfair labor practice. My grievance concerns the fact that another Psychologist IV Doctorate received a 17¢ per hour add on pay adjustment in October of 1982.

The Commission's authority to act as the 4th step in the non-contractual grievance procedure is premised on the language of §230.45(1)(c), Stats.:

(1) The Commission shall:
* * *

(c) Serve as final step arbiter in a state employe grievance procedure relating to condition of employment, subject to rules of the secretary providing the minimum requirements and scope of such grievance procedure.

The statute specifies both that only matters relating to "conditions of employment" may be grieved and that the Commission's authority in the area is "subject to rules of the secretary", i.e., the Secretary of the Department of Employment Relations (DER).

The Commission has interpreted the phrase "conditions of employment" used in § 230.45(1)(c), Stats., in conjunction with § 111.93(3), Stats., which provides:

[I]f 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.

In prior cases, the Commission has concluded that the denial of compensation for overtime hours worked (Luchsinger v. PSC, 82-233-PC, 1/31/83) and the denial of an exceptional performance award (Wing v. UW, 80-256-PC, 4/1/81) relate to "wages" and not to "conditions of employment". Those cases were then dismissed due to a lack of jurisdiction. The subject of the appellant's grievance is an add on pay adjustment. This, too, relates to wages and the appeal must be dismissed accordingly.

It should also be noted that the rules of the Secretary of DER explicitly limit the non-contract grievance procedure to non-represented employees. The rules allow an "employee" to "grieve issues which affect an individual's ability to perform assigned responsibilities satisfactorily and effectively ..." §ER 46.03(1), Wis. Adm. Code. However, the definition section of the grievance procedure chapter provides, in part:

"Employee" means a state employe in the classified civil service under §230.08(3), Stats., except a limited term employe or an employe covered by a collective bargaining agreement under subch. V of Ch. 111, Stats. §ER 46.02(2), Wis. Adm. Code (emphasis added).

Because the appellant concedes he is a represented employe and because of the subject matter of his grievance, this matter must be dismissed. To rule otherwise would require the Commission to ignore the statutory constraints placed upon the Commission's authority by the legislature and found in §230.45(1)(c), Stats.


The appellant has asked that if the Commission concludes it lacks jurisdiction in this case that it advise the appellant of "the appropriate state grievance procedure" so that the substantive issue may be addressed. The Commission is unaware of any administrative procedures available to the appellant and can only suggest that he might wish to consult an attorney in order to consider whether a judicial proceeding would be appropriate.

ORDER

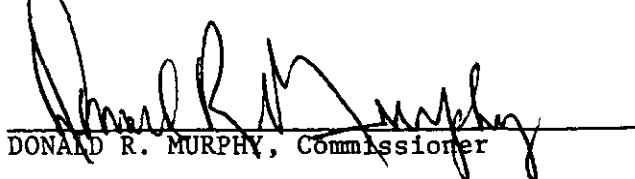
This matter is dismissed due to lack of subject matter jurisdiction.

Dated: April 12, 1985

STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


LAURIE R. MCCALLUM, Commissioner


DONALD R. MURPHY, Commissioner

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