

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 *
 WILLIAM SCHMALTZ, *
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 Appellant, *
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 v. *
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 Secretary, DEPARTMENT OF *
 HEALTH AND SOCIAL SERVICES, *
 and Secretary, DEPARTMENT OF *
 EMPLOYMENT RELATIONS, *
 *
 Respondents. *
 *
 Case No. 85-0067-PC *
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 * * * * *

DECISION
AND
ORDER

This appeal was filed with the Commission as the final step in the non-contractual grievance procedure and related to the failure to restore fringe benefits the appellant lost as a result of a layoff. The Commission's jurisdiction over the non-contractual grievance procedure derives from §230.45(1)(c), Stats., which provides:

(1) The Commission shall:

* * *

(c) 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 requirements and scope of such grievance procedure.

In an Interim Decision dated February 6, 1986, the Commission decided that the term "conditions of employment" in §230.45(1)(c), Stats., included matters relating to wages and hours and was sufficiently broad, therefore, to include within its scope the matter relating to fringe benefits which forms the basis of the instant appeal.

Such Interim Decision also indicated that an additional issue related to subject matter jurisdiction needed to be addressed. This is the purpose of the instant decision and order.

Section ER 46.02, Wis. Adm. Code, provides, in pertinent part:

- (3) "Employer" means an agency defined under §230.03(3), Stats., in which the employe is or has been employed.
- (4) "Grievance" means a written complaint by one or more employes acting as individuals, requesting relief in a matter of concern or dissatisfaction relating to their employment which matter is subject to the control of the employer and within the limitations of this chapter (emphasis added).

Section 230.03(3), Stats., provides, in pertinent part, that:

- (3) "Agency" means any state board, commission, committee, council, department or unit thereof created by the constitution or statutes...

In the instant case, the "employer", for purposes of Section ER 46.02, Wis. Adm. Code, is the Department of Health and Social Services (DHSS). It is clear that the appellant occupied a position within the DHSS at all times relevant to this appeal and that the DHSS is an "agency" within the meaning of §230.03(2), Stats. Appellant alleges in his brief of March 19, 1986, that the State of Wisconsin should be regarded as the "employer." Such a conclusion would clearly be contrary to the clear language of the applicable statute and administrative rule, i.e., the State of Wisconsin is clearly not an "agency" within the meaning of §230.03(3). Stats.

The remaining question then is whether the DHSS had control over the matter which forms the basis of the instant appeal.

Chapter 317 of the Laws of 1981 mandated five-day layoffs for certain state employes during 1982 and 1983. Appellant was one of these employes and lost certain benefits as a result of such layoff. Subsequently, the Department of Employment Relations (DER) and AFSCME Council 24, WSEU,

agreed to restore sick leave, length of service pay, and vacation benefits to employees who were represented by the WSEU as of November 24, 1984, and who had lost these benefits as a result of the five-day layoffs. Appellant was a represented employe at the time of his layoff but an unrepresented employe as of November 24, 1984. DER interpreted the language of the subject agreement to mean that employes, like appellant, who were represented by the WSEU at the time of the layoffs, but who were unrepresented as of November 24, 1984, were not included in the negotiated benefits restoration. It also appears that DER further decided not to unilaterally restore such lost benefits to these now unrepresented employes. No information has been brought before the Commission from which it could be concluded that DHSS had any authority to act in regard to this matter. The subject settlement agreement with the WSEU was negotiated and signed by the DER, DER is the agency responsible for the interpretation of such agreement (§111.815(2), Stats.), and neither the agreement nor any other authority appears to grant to individual agencies other than the DER the authority to make any decisions regarding the restoration of benefits as the result of the subject layoffs.

It appears, therefore, that the subject matter of the instant appeal does not qualify as a "grievance" under §ER 46.02, Wis. Adm. Code, since appellant's employer (DHSS) has no control over such subject matter and, as a result, the Commission cannot assume subject matter jurisdiction over this appeal pursuant to §230.45(1)(c), Stats.


ORDER

This appeal is dismissed for lack of subject matter jurisdiction.

Dated: July 25, 1986 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson

LRM:jmf
ID11/2


DONALD R. MURPHY, Commissioner


LAURIE R. McCALLUM, Commissioner

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