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 *
 DAVID WING, *
 *
 Appellant, *
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 v. *
 *
 President, UNIVERSITY OF *
 WISCONSIN SYSTEM, *
 *
 Respondent. *
 *
 Case No. 85-0112-PC *
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 * * * * *

DECISION
AND
ORDER

This matter is filed with the Commission as the final step in the non-contractual grievance procedure. During a prehearing conference on June 24, 1985, the respondent raised an argument that the grievance fell within the category of management rights and that the Commission, therefore, lacked jurisdiction. A briefing schedule was established.

The letter of appeal in this matter states as follows:

At issue here is Stout's attempt to create a constructive discharge due to my disclosure and filing of grievances.

Stout provides me with work assignments but then refuses my access to and/or provides me with the information needed to timely complete said assignments, then gives me a verbal and written reprimand for being untimely. A clear Catch 22 problem and an abuse of discretion:

The grievance form attached to the appeal offers no description of the subject of the grievance. However, a copy of the respondent's third step response provides in part:

The subject of this grievance occurred during a conversation on April 19, 1985 between the grievant and his supervisor, Dr. Jerry Anderson. Mr. Wing alleges that Dr. Anderson permit him (Wing) to use a tape recorder for daily work activities. Mr. Wing insists that Dr. Anderson failed to specify any rules or statutes which prohibit use of a tape recorder at work. Mr. Wing insists that he

needs to tape record in order to protect himself against "false claims and false information."

* * *

... Mr. Wing wants to be issued a state owned small (hand held) tape recorder to be used as protection from threats, etc. On May 15, 1985, a hand held tape recorder was issued to Mr. Wing. Stout administrators will permit the use of the tape recorder during formal grievance steps and during formal performance review sessions, but not in the day-to-day work assignments where there are conversations with other staff members. Stout staff believe they have compromised enough on this issue. Since there is no state statute which grants employees the right to use tape recorders, the UW System believes it has the management right to determine the procedures and types of equipment that will be used by employees to carry out their assignments. Speaking on behalf of UW-System Administration, we support the current tape recorder policy at Stout as outlined above.

Stout supervisors have not committed an abuse of their discretion with tape recorder policy. They have issued a hand held tape recorder as requested by Mr. Wing. I find no compelling reason at this time to grant further relief in this issue.

At the prehearing conference, the appellant was directed to submit copies of the attachments referred to in his third step grievance form "so that the Commission may understand his allegations." Those documents were never submitted.

Based upon the letter of appeal and the employer's decision at the third step, there are three allegations of improper conduct implicit in this appeal: 1) a refusal to provide appellant information necessary to performing his work assignments, 2) resulting in a verbal and a written reprimand, and 3) a refusal to permit the appellant to use a tape recorder in day-to-day work assignments.

Among those topics that are excluded from the scope of the non-contractual grievance procedure under §ER 46.03(2), Wis. Adm. Code, are oral reprimands and conditions of employment that are a management right. Management rights are defined in §ER 46.04(2), Wis. Adm. Code and include:

(a) Utilizing personnel, methods and means to carry out the statutory mandate and goals of the agency.

* * *

(c) Managing and directing the employes of the agency.

Both allegations 1) and 3) listed above fall within the management rights described above. Therefore, these allegations are outside the scope of the grievance procedure and the Commission lacks subject matter jurisdiction under §230.45(1)(c), Stats. In addition to the proscription against grieving oral reprimands found in §ER 46.03(2), Wis. Adm. Code, the grievance procedure rules specifically prohibit grieving written reprimands to the Commission at the fourth step. §ER 46.07(1)(a), Wis. Adm. Code. Therefore, none of the three allegations implicit in this appeal fit within the Commission's jurisdiction.

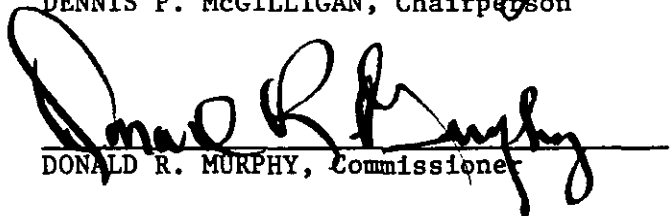
ORDER

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

Dated: September 20, 1985

STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner

KMS:jgf
JGF002/2

Note: Laurie R. McCallum, Commissioner, did not participate in this decision.

Parties

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