
 NEAL CORCORAN,
 Appellant,
 v.
 Secretary, DEPARTMENT OF
 HEALTH AND SOCIAL SERVICES,
 Respondent.
 Case No. 86-0175-PC

DECISION
 AND
 ORDER

This matter is before the Commission on respondent's motion to dismiss for lack of subject matter jurisdiction. Both parties have filed briefs.

This is an appeal of a denial of a non-contractual grievance. In his appeal dated October 6, 1986, the appellant alleges as follows:

I was assigned to the kitchen during WCI lockdown. My duties were cleaning pots & pans. I worked with (3) teachers assigned to the same duties (F. Sieracki, J. Vail, & N. Lehner) who were paid for the hours worked over the normal 40 hours. From 07/31/86, thru 08/02/86, I worked 20 hours overtime. On leave balance statement I received on 08/14/86, I have been granted compensatory time.

For relief appellant requested:

I wish to be paid for the overtime hours I worked. I supervised no one during this period and was assigned out of my normal work area. I wish to be treated equally for duties performed.

The Commission's jurisdiction over non-contractual grievances is set forth in s.230.45(1)(c), stats., which provides for the Commission to:

"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."

The respondent argues that "since the subject of this appeal is 'wages' and wages are not a 'condition of employment'" this case should be dismissed. The respondent cites Luchsinger v. PSC, 82-233-PC (1/31/83) in support

thereof. In Luchsinger the Commission concluded that the denial of compensation for overtime hours is a matter involving "wages" not "conditions of employment" and dismissed an appeal involving same for lack of subject matter jurisdiction.

Luchsinger, however, is no longer applicable. The Commission in an Interim Decision dated February 6, 1986 (Schmaltz v. DHSS & DER, 85-0067-PC) noted:

From February of 1978 until February of 1984, there were no administrative rules "providing the minimum requirements and scope" of the grievance procedure for which the Commission served as the final step arbiter under s. 230.45(1)(c), Stats. During this period, the Commission construed the reference in that provision to "conditions of employment" to mean that matters relating to wages or hours could not be grieved. In DHSS v. Pers. Comm. (Hovel), (Dane County Circuit Court) 79CV630 (1/29/81), the court held that the Commission could not review a grievance because it concerned the grievant's wage or salary:

[T]he terms "wages," "hours" and "conditions of employment" have come to be considered as distinct "terms of art" in the field of labor-management relations. The instant statute, however, employs only the broad language "conditions of employment," with no clarifying language. The statute itself being unclear on this point, the court will accord great weight to the interpretation placed upon it by the agency charged with its administration.
(citations omitted)

In February of 1984, the Secretary of the Department of Employment Relations promulgated the rules that were specifically provided for in s. 230.45(1)(c), Stats. Several provisions within those rules indicate that a broader definition of the term "conditions of employment" has been utilized.

The Commission in Schmaltz went on to discuss those provisions of the rules and decided that:

"The rules [ch. 46, Wis. Adm. Code] interpret the term "conditions of employment" as that phrase is used in the statute. The general statement of scope in s. ER 46.03(1), Wis. Adm. Code, is certainly broad enough to include matters relating to wages and hours, there is nothing within the various exceptions to the general provision that would exclude wages and hours, and there are three separate references that indicate some wage matters are grievable."

The benefits at issue in Schmaltz included sick leave, length of service pay and vacation benefits. The Commission declined to grant respondents' motion to dismiss.

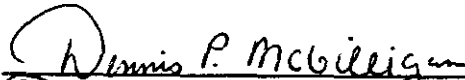
Applying the standard in Schmaltz to the facts of the instant case, the Commission finds that compensation for overtime hours is a "condition of employment" within the meaning of §230.45(1)(c) and the Commission has jurisdiction over the instant appeal.

ORDER

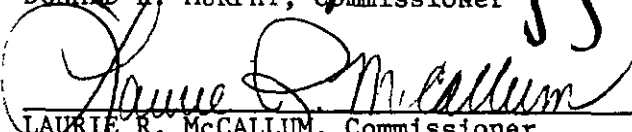
The respondent's objection to subject matter jurisdiction is overruled.

Dated: February 5, 1987

STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner


LAURIE R. MCCALLUM, Commissioner

baj
JGF004/2

Parties

Neal Corcoran
Box 184, Route 2
Waupun, WI 53963

Tim Cullen
Secretary, DHSS
P. O. Box 7850
Madison, WI 53707