

STATE OF WISCONSIN

PERSONNEL COMMISSION

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GERALD H. MUGERAUER,
 Appellant,

v.

Secretary, DEPARTMENT OF
 HEALTH AND SOCIAL SERVICES,
 Respondent.

Case No. 87-0122-PC

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DECISION
 AND
 ORDER

Appellant, an Institution Aide 2, filed a letter of appeal with the Commission on July 20, 1987. The subject of the appeal was a one day suspension for violation of a work rule. The letter of suspension stated, in part:

If you believe this action is not based on just cause, you may appeal through the grievance procedure as provided by Article IV of the contract. An appeal must be made within thirty (30) days of the date of this letter.

By letter dated July 31, 1987, the Commission informed the complainant that his appeal raised a jurisdictional issue and invited his response. Appellant responded, in part, as follows:

I have been informed by the Executive Council of the union representing me that the State of Wisconsin and the union are not processing any grievances during contract negotiations; therefore, I feel I am not being represented. I also feel I have a right to a speedy and fair hearing as the rights guaranteed under due process of law.

While it may be true that neither the union nor management are processing grievances during contract negotiations, nothing indicates that grievances may not be filed during this period. The appellant agreed that the WSEU contract, which otherwise had an end date of June 30, 1987, had been

extended by mutual agreement during the pendency of negotiations and that employes covered by the extended contract could still file grievances under Article IV, even though the grievance might not move through the various steps until after negotiations ended. The Commission's jurisdiction over suspensions pursuant to §230.44(1)(c), Stats., is superseded by §111.93(3), Stats.:

[I]f a collective bargaining agreement exists between the employer and a labor organization representing employes in a collective bargaining unit, the provisions of that agreement shall supersede the provisions of civil service and other applicable statutes... related to wages, fringe benefits, hours and conditions of employment whether or not the matters contained in those statutes... are set forth in the collective bargaining agreement.

Because the collective bargaining agreement remains in effect, the Commission lacks jurisdiction over this appeal.

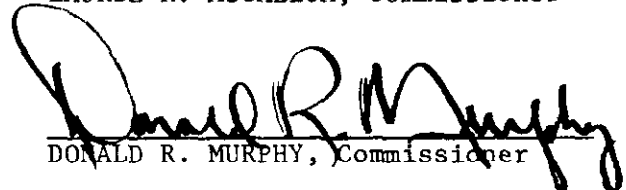
ORDER

This matter is dismissed for lack of subject matter jurisdiction.

Dated: September 10, 1987 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


LAURIE R. MCCALLUM, Commissioner


DONALD R. MURPHY, Commissioner

KMS:jmf
JMF05/3

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