

STATE OF WISCONSIN

PERSONNEL COMMISSION

\* \* \* \* \*  
 \*  
 JEFFREY LYNCH, \*  
 \*  
                   Appellant, \*  
 \*  
 v. \*  
 \*  
 Secretary, DEPARTMENT OF \*  
 HEALTH AND SOCIAL SERVICES, \*  
 \*  
                   Respondent. \*  
 \*  
 Case No. 88-0041-PC \*  
 \*  
 \* \* \* \* \*

DECISION  
AND  
ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.45(1)(d), Stats., of the denial of hazardous employment injury benefits under §230.36(4), Stats. Respondent has filed a motion to dismiss for lack of subject matter jurisdiction and the parties have filed arguments on the motion.

DISCUSSION

The facts relevant to jurisdiction do not appear to be in dispute. Appellant is in a position which is classified as an Institutional Aid 3 and which is in a collective bargaining unit represented by AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO. During the period in question, a collective bargaining agreement has been in force which includes at Article 13, Section 16:

"The Employer agrees to continue in effect the present provisions and administration of Section 230.36(1), (2) and (3) ... For the purposes of this section the provision of ss. 230.36(4) of the Wisconsin Statutes, concerning appeals to the Administrator of the State Division of Personnel, shall not be applicable...."

Appellant received from his employer notice of denial of certain 230.36 benefits on March 5, 1988. He grieved this at the third step on April 4, 1988, and filed this appeal on the same date.

Section 111.93(3), Stats., provides in relevant part as follows:

"... if 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 provision of civil service and other applicable statutes ... related to wages, hours and conditions of employment whether or not the matters contained in those statutes, rules and policies are set forth in the collective bargaining agreement."

Appellant argues in his brief filed July 6, 1988:

"The right to appeal under Wis. Stat. 230.36(4) is denied by the current union contract. It does not, however, deny my Appeal rights under Wis. Admin. Code ER-Pers 28.06. The purpose of the various statutes is to insure the Employer's responsibility to injured State Employees in Hazardous duty employment."

In the first place, the fact that the contract does not refer specifically to §ER-Pers 28.06, Wis. Adm. Code, is not significant, because this administrative code provision does not create an independent right to appeal a denial of hazardous employment benefits independent of §230.36(4), Stats., it merely reflects an appeal right created by statute.

In the second place, regardless of what the contract does or does not say about appeal rights, §111.93(3), Stats. makes it clear that the provisions of a contract supersede civil service code provisions as to bargainable subjects in any case. In Wendt v. DHSS, No. 80-110-PC (12/3/81), the Commission explicitly held that §111.93(3), Stats., operates to supersede Commission jurisdiction over a §230.36(4), Stats., appeal by a represented employe.

Finally, appellant asserts that the most recent Attorney General's opinion as to the intent of sec. 230.36, Stats., supports his position. Appellant did not provide a citation to the opinion, and the Commission has

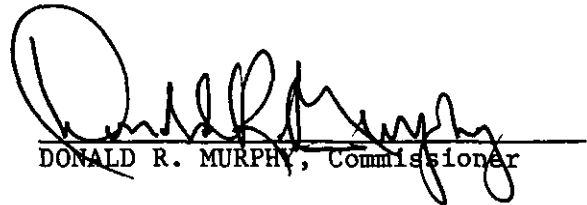
been unable to find any opinion on §230.36, Stats., that would support the theory that the Commission's jurisdiction over the subject matter of this appeal is not supplanted by the operation of §111.93(3), Stats.

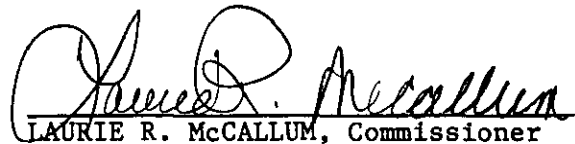
ORDER

This appeal is dismissed for lack of subject matter jurisdiction.

Dated: August 10, 1988 STATE PERSONNEL COMMISSION

AJT:rcr  
JGF002/1

  
DONALD R. MURPHY, Commissioner

  
LAURIE R. McCALLUM, Commissioner

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