

STATE OF WISCONSIN

PERSONNEL COMMISSION

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SUSAN CORDLE,

Appellant,

v.

Secretary, DEPARTMENT OF
AGRICULTURE, TRADE AND
CONSUMER PROTECTION,

Respondent.

Case No. 89-0037-PC

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RULING
ON
MOTION TO DISMISS
AND
FOR SUMMARY
JUDGMENT

This matter is before the Commission on respondent's motions to dismiss and for summary judgment filed on June 13, 1989. This motion does not pertain to the companion equal rights case, No. 89-0047-PC-ER.

The procedural background of this appeal began when Ms. Cordle sent to the Commission a copy of a March 28, 1989, letter addressed to Jane M. Jansen, Assistant Administrator, Trade and Consumer Protection Division. The Commission then asked Ms. Cordle whether she wished to pursue a formal appeal concerning the subject matter of said letter, and she confirmed that she did by a letter dated April 6, 1989, which had attached a copy of the March 28th letter.

The first letter to Ms. Jansen dated March 28, 1989, stated as follows:

This letter is in reference to the Weights & Measures Inspector I position based in the Green Bay area formerly held by Durwood Gaffney.

I am aware that Mr. Gregory Otradovich recently interviewed for and accepted the Weights & Measures Inspector I position based in Madison.

Upon receiving notification of being eligible for an interview for that position, I sent you a letter expressing my interest in this classification; however, I had to decline the interview opportunity due to the considerable overnight, statewide travel this specific

position would involve. I also indicated in that letter my desire to be considered for the Green Bay based position.

Now, I have been told that Mr. Otradovich has asked to transfer into the Green Bay based position which is closer to his home. This transfer request has been granted. He is still serving his probationary period.

Article VII (Transfers), Section 1, Part 1 of the current WSEU labor agreement states in part, that "... Interested permanent employees ... who have completed their probationary period ... shall indicate their desire for a transfer" Unless I am misunderstanding this Contract, this practice is in violation of the current labor agreement, and quite possibly the State Affirmative Action/Discrimination Regulations since this is a totally male dominated classification.

Jane, I am very disappointed that this action has been taken by our Department. Also, with hindsight, I should have interviewed for the Madison based position and, if hired, requested an immediate transfer into the Green Bay based position. If this is standard practice, why didn't you inform me of this possibility? I would think being a Department employee for 10½ years would have afforded me that courtesy.

Nonetheless, I wanted you to be aware of Section VII and to voice my disappointment at these actions.

Ms. Cordle's letter of April 6, 1989, contained, in part, the following:

This letter is in reference to the correspondence you sent me dated April 3, 1989, regarding the filled Weights & Measures Inspector I position based in Green Bay.

I do wish to file an appeal and/or complaint regarding these actions by the Trade and Consumer Protection Division of the Department of Agriculture, Trade and Consumer Protection.

In addition to the violations of Article VII, Section 1, Part 1 of the current labor agreement and possible Affirmative Action/Discrimination Regulations (due to this classification being all male dominated), Mr. Gregory Otradovich has transferred twice within a six month period which is also in violation of Article VII.

The only apparent jurisdictional basis for this appeal is §230.44(1)(d), Stats., which provides for appeal of a "personnel action after certification which is related to the hiring process in the classified service and which is alleged to be illegal or an abuse of discretion...."¹ The basis for

¹ The allegations of sex discrimination involve a different basis for Commission jurisdiction -- §230.45(1)(b), 111.375(2), Stats. -- and are being processed in a separate file, No. 89-0047-PC-ER.

respondent's motion to dismiss is that "the exclusive remedy for resolving a contractual matter is the grievance/arbitration process under Article IV of the contract...." Respondent's brief, p. 4.

Section 111.93(3), Stats., provides that the provisions of a collective bargaining agreement "shall supersede the provisions of civil service and other applicable statutes ... related to wages, fringe benefits, and hours and conditions of employment...." Therefore, to the extent that complainant contends that the transfer of Mr. Otradovich violated the contract, that part of her appeal is superseded by the provisions of the collective bargaining agreement pursuant to §111.93(3) and must be dismissed.

However, on a motion to dismiss, the provisions of the appeal must be liberally construed. In addition to her contentions that the transfer of Mr. Otradovich violated the collective bargaining agreement and that respondent's handling of these transactions was discriminatory, she also contends in her March 28th letter that:

" ... I should have interviewed for the Madison based position and, if hired, requested an immediate transfer into the Green Bay based position. If this is standard practice, why didn't you inform me of this possibility? I would think that being a Department employe for 10½ years would have afforded me that courtesy."

This part of the appeal can be liberally construed as an allegation of an "abuse of discretion" under §230.44(1)(d), Stats., i.e., that respondent's failure to have informed her of the possibility of transfer constituted a "personnel action after certification which is related to the hiring process in the classified service and which is alleged to be ... an abuse

of discretion...." Therefore, it would not be appropriate to dismiss this part of the appeal.²

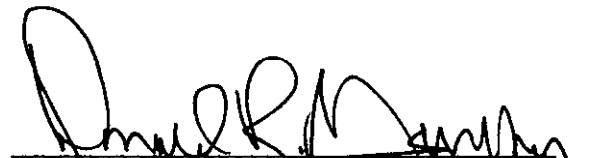
The Commission will not reach respondent's motion for summary judgment which asserts there was no violation of the collective bargaining agreement, inasmuch as the Commission has concluded that it lacks jurisdiction over this aspect of this appeal.

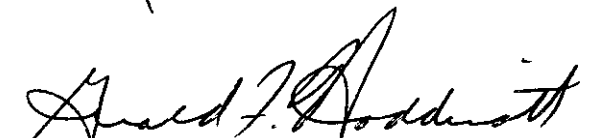
ORDER

Respondent's motion to dismiss filed June 13, 1989, is granted in part and denied in part, and so much of this appeal as alleges violation of the collective bargaining agreement is dismissed for lack of subject matter jurisdiction.

Dated: August 24, 1989 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

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² According to respondent's brief, this position was staffed by the use of an open competitive hiring process. Therefore, the process presumably would not have been subject to the contractual transfer provisions, and the superseding effect of §111.93(3), Stats., would not come into play.