STATE OF WISCONSIN PERSONNEL COMMISSION

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MICHAEL COULTER,

Appellant,

v.

Secretary, DEPARTMENT OF CORRECTIONS,

Respondent.

Case No. 90-0355-PC

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INTERIM DECISION AND ORDER

On August 21, 1990, appellant filed the instant appeal of respondent's decision to deny add-on pay for 16 college credits earned by appellant prior to his hire by respondent as a Teacher 2 at Waupun Correctional Institution (WCI) effective February 13, 1989. At a prehearing conference conducted on October 18, 1990, respondent moved to dismiss the instant appeal on the bases of untimely filing; lack of subject matter jurisdiction under §230.44(1)(d), Stats.; and supersession of the Commission's jurisdiction pursuant to §111.93(3), Stats. Both parties were afforded the opportunity to file briefs in relation to this motion and the briefing schedule was completed on December 10, 1990.

The following facts appear to be undisputed:

1. Appellant was hired as a Teacher 2 by respondent effective February 13, 1989.

2. In a memo dated May 29, 1990, to Tom Donovan, Education Director, appellant stated as follows:

> I am requesting that I receive additional add-on credits which date back to my initial employment with W.C.I. as of February 1989. Having earned 19 credits, University of Wisconsin-Stout, 8 credits University of Wisconsin-Oshkosh, and 2

> credits University of Wisconsin-Extension, I am entitled to the additional add-ons.
>
> I brought this to your attention at the time I accepted my position.
>
> Enclosed is a copy of my transcripts.

3. Appellant had completed the subject college courses prior to February 13, 1989.

4. In a memo dated August 9, 1990, from Glenn Weeks, Personnel Manager, appellant was advised that add-on pay for 16 of the subject college course credits had been denied. However, appellant was granted add-on pay for the remaining credits retroactive to February 13, 1989, appellant's date of hire.

5. Appellant's position is covered by a collective bargaining agreement. At the time of the subject hire, the applicable collective bargaining agreement did not include a provision governing add-on pay for college course credits for Teacher 2 positions. At the time the instant appeal was filed, the applicable collective bargaining agreement (effective 6/3/90 - 7/30/91) did include a provision governing add-on pay for college course credits for Teacher 2 positions.

6. On February 3, 1987, the Department of Employment Relations (DER) issued Bulletin Number CC-107 which stated as follows, in pertinent part:

> The Joint Committee on Employment Relations (JCOER), at its meeting on December 19, 1986, approved modifications to Section A. III of the 1985-87 Compensation Plan. These modifications provide for certain amounts to be added onto the base rate of employes in the Teacher 1 and 2 and Teacher-Supervisor 1 and 2 classes.
>
> The concept of these add-ons is to provide additional compensation for Teachers or Teacher-Supervisors who earn additional college credits beyond those required for basic certification as a Teacher in the State of Wisconsin. In order for the add-on to be applied, the appointing authority must make a determination that the additional credits are relevant to the duties and responsibilities of the position. These add-ons are not part of base pay and must be discontinued when an incumbent ceases to hold a

> Teacher of Teacher-Supervisor position. The amount of the add-on must also be re-evaluated by the appointing authority when an incumbent moves to a different Teacher and/or Teacher-Supervisor position.
>
> The changes to the Compensation Plan authorizing these add-on's are effective on February 15, 1987. . . .

Appellant claims as the basis for the Commission's jurisdiction §230.44(1)(d), Stats. Respondent asserts in response to this that the transaction which appellant is appealing, i.e., the denial of add-on pay for college course credits earned prior to February 13, 1989, is "not hiring-related," and, even if it were, appellant failed to file his appeal within 30 days of the hiring decision.

The Commission has held in Taddey v. DHSS, 86-0156-PC (6/11/87) and more recently in Siebers v. DHSS, 87-0028-PC (9/10/87) and Meschefske v. DHSS, 88-0057-PC (7/13/88), that it has jurisdiction pursuant to §230.44(1)(d), Stats., over a decision by an appointing authority establishing an employee's starting rate of pay upon appointment. In the instant case, appellant alleges that his starting rate of pay upon appointment to the subject Teacher 2 position should have included add-on pay for certain college course credits he had earned and the failure to include such add-on pay in his starting rate of pay constitutes the basis for this appeal. The Commission concludes that the situation under consideration here is closely akin to those in the Taddey, Siebers, and Meschefske cases cited above and that the Commission has jurisdiction here pursuant to §230.44(1)(d), Stats. Olson v. DHSS, 88-0087-PC (12/5/88), and Marquardt v. DHSS, 89-0106-PC (10/4/89), cited by respondent, are inapposite because those cases did not involve the establishment of the starting rate of pay on appointment.

Respondent's argument that, since appellant claims jurisdiction pursuant to §230.44(1)(d), Stats., his failure to file his appeal within 30 days of the

appointment decision renders his appeal untimely, is not persuasive. Not all decisions "related to the hiring process" are rendered prior to or contemporaneous with the appointment decision and the failure of the appointing authority to render related decisions at that time should not operate to deprive an employee of his or her right of appeal. In the instant case, respondent failed to render a decision on appellant's add-on pay prior to or at the time of appellant's appointment to the subject position despite appellant having raised the issue with respondent at that time (See #2 above). To permit respondent to avoid review of this add-on pay decision by simply delaying this decision until after 30 days had passed from the date of appellant's appointment would frustrate the goals of the civil service system and would lead to an inequitable and absurd result. It is clear that respondent's decision relating to add-on pay to be included in appellant's starting rate of pay was communicated to appellant on or around August 8, 1990, and that appellant appealed this decision on August 21, 1990, well within the statutory 30-day time limit for appealing decisions pursuant to §230.44(1)(d), Stats.

Respondent further argues in opposition to the Commission's jurisdiction over this appeal the applicability of §111.93(3), Stats., which states as follows, in pertinent part:

> (3) . . . 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 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.

Respondent first argues in this regard that the applicable collective bargaining agreement is the one in effect at the time the subject decision was rendered, i.e., August of 1990, and, since that agreement contained a provision

governing add-on pay for college course credits earned, the Commission's jurisdiction over this matter was superseded by operation of §111.93(3), Stats. However, it would only be appropriate to determine appellant's starting rate of pay based upon the requirements in effect at the time of appointment. Respondent implicitly adopted this approach by making the effects of its August, 1990, decision in this regard retroactive to the date of appellant's appointment. As a consequence, the Commission will look to the contract in effect as of February 13, 1989, to determine the applicability of §111.93(3), Stats. It appears to be undisputed by the parties that this contract did not contain an express or implied provision governing add-on pay for college course credits for a Teacher 2 position. This conclusion is further buttressed by the fact that, during the term of this contract, the Legislature's Joint Committee on Employment Relations established such add-ons, without bargaining them, for positions within a collective bargaining unit. Respondent argues that §111.93(3), Stats., should apply notwithstanding this fact since such a provision was "bargainable" under the law that existed at that time. However, as the Commission made clear in its Taddey decision cited above,

> It is the provisions of the agreement that supersede such provisions of the statutes relating to wages, hours and conditions of employment. In order to determine which statutory provisions are superseded, one must examine the provisions of the agreement. . . (at page 7)

In other words, it is those provisions which are actually bargained and actually stated in a collective bargaining agreement which are given superseding effect under §111.93(3), Stats. When, as here, no such provision was stated in the applicable collective bargaining agreement, the Commission's jurisdiction is not superseded by operation of §111.93(3), Stats.

Order

This motion to dismiss is denied.

Dated: January 24, 1991 STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

LRM/gdt/3

DONALD R. MURPHY, Commissioner

GERALD F. HODDINOTT, Commissioner