

TERRY R. JORDAN,

Appellant,

v.

Secretary, DEPARTMENT OF
NATURAL RESOURCES,

Respondent.

Case No. 90-0386-PC

DECISION
AND
ORDER

This matter is before the Commission at the fourth step in the non-contractual grievance process. During a prehearing conference held on December 11, 1990, the respondent raised a jurisdictional objection. The parties were provided an opportunity to file briefs. The underlying facts do not appear to be in dispute.

FINDINGS OF FACT

1. At all times relevant to this matter, the appellant has been employed by the respondent as the Assistant Manager of the Lake Kegonsa State Park with the classification of Park Superintendent 2.

2. Since 1987, the respondent has offered a "work-at-home" program to permanent employees who are new natural or adoptive parents. The program typically runs for the period of time that an unpaid leave would otherwise cover.

3. Employees who take part in the program sign a "temporary Work-at-Home Agreement" which provides in part:

DURATION: Temporary work at home situations may not exceed six months in total. The employee may terminate this work situation at any time. The supervisor may terminate the work situation if work quality, productivity, or communication is not sufficient to meet management needs. If termination occurs the employee may take leave without pay or paid leave (vacation, personal holidays, compensatory time and/or sabbatical leave) for the remainder of the six month maternity leave, or return to work. Two weeks written notice will be given prior to termination of the work at home situation whenever possible.

WORK SCHEDULE: The supervisor and employee will establish a schedule that requires a number of scheduled work hours equivalent to a 50% or 75% time. Work shall be performed during the scheduled period without generating any overtime or differential pay unless prior approval has been granted.

4. On or before July 1, 1990, the appellant requested to participate in the work-at-home program. His request was denied in writing in a memo from his supervisor, Deb Weidert, dated July 9, 1990. That memo stated in part:

On July 1, 1990 you requested permission to work at home after your wife has her baby which is due in mid July. Your request was based on the Department's guidelines in the Affirmative Action Handbook. The Department does grant employees an optional work at home experience when the work conditions are favorable for this program. I think this is a valuable program and appreciate the Department's efforts in employee benefits.

At this time, you will be taking 5 sick leave days as paternity leave and then use your compensatory time balance, (39 hours). I am glad that you are able to take this time to be with your wife and new family member. As for the request for work at home activities, I am not able to approve this option level

The memo then went on to identify various reasons for denying participation in the program.

5. The appellant grieved Ms. Weidert's decision via the non-contractual grievance procedure. He filed his fourth step grievance with the Commission on October 19, 1990.

CONCLUSION OF LAW

The Commission lacks jurisdiction over this matter.

OPINION

The appellant seeks to grieve the decision denying his request to participate in the working-at-home program offered by the respondent for its employees.

The Commission's jurisdiction over non-contractual grievances is based on §230.45(1)(c), Stats., which provides that the Commission shall: "Serve as

final step arbiter in the state employe grievance procedure established under s. 230.14(14) [230.04(14)]." According to §230.04(14), Stats., the Secretary of the Department of Employment Relations "shall establish, by rule, the scope and minimum requirements of a state employe grievance procedure relating to conditions of employment."

The Secretary of DER has established the scope of the grievance procedure in §ER 46.03, Wis. Adm. Code:

(1) Under this chapter, an employe may grieve issues which affect his or her conditions of employment, including any matter on which the employe alleges that coercion or retaliation has been practiced against the employe except as provided in sub. (2).

(2) An employe may not use this chapter to grieve:

* * *

(j) A condition of employment which is a right of the employer as defined in s. ER 46.04; or

(k) Any matter related to wages, hours of work, and fringe benefits.

Section ER 46.04, Wis. Adm. Code, provides:

(1) Nothing in this chapter is intended to interfere with the sole right of the employer to carry out its statutory mandate and goals.

(2) For the purpose of this chapter, the management rights of the employer include, but are not limited to, the following:

(a) Utilizing personnel, methods and means to carry out the statutory mandate and goals of the agency.

(b) Determining the size and composition of the work force.

(c) Managing and directing the employes of the agency.

(d) Hiring, promoting, transferring, assigning or retaining employes.

As is shown by the language of the agreement, employes who participate in the work-at-home program are required to work scheduled work hours of between 50% and 75% of normal hours. In addition, the Secretary of the Department of Employment Relations has promulgated administrative rules

which preclude non-contractual grievances relating to those conditions of employment that are the right of the employer and has defined management rights to include the authority to assign, manage and direct employees and to utilize personnel to carry out agency goals. Even if it can be successfully argued that the work-at-home program is not "related to hours of work," as that phrase is used in §ER 46.03, Wis. Adm. Code, the program fits within the scope of management rights enumerated in §ER 46.04, Wis. Adm. Code. Therefore, the respondent's decision not to allow the appellant to participate in the work-at-home program is not reviewable by the Commission at the fourth step of the non-contractual grievance procedure and this grievance must be dismissed.

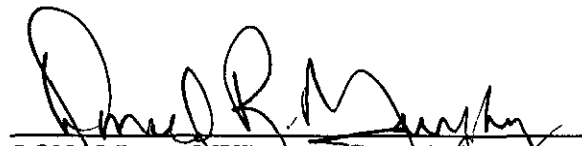
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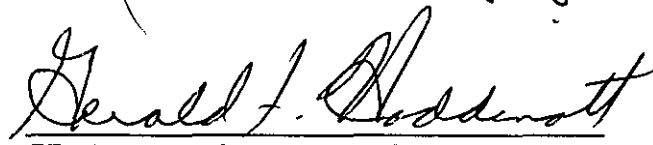
This matter is dismissed for lack of subject matter jurisdiction.

Dated: January 11, 1991 STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

KMS:kms
K:D:Jur-grievance (Jordan)


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

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