

JAMES R. CESTKOWSKI,

Appellant,

v.

Secretary, DEPARTMENT OF
CORRECTIONS,

Respondent.

Case No. 90-0403-PC

DECISION
AND
ORDER

This matter is before the Commission on the respondent's motion to dismiss for lack of subject matter jurisdiction. The parties have been provided an opportunity to file written arguments. The following findings appear to be undisputed:

1. The appellant was employed as a Building Construction Superintendent 2 (BCS 2) in the Department of Administration from September of 1979 through May 5, 1990.

2. As a BCS 2, the appellant's position was covered by the terms of a collective bargaining agreement entered into between the State of Wisconsin and the State Engineering Association.

3. Effective May 6, 1990, the appellant was appointed as Superintendent of Buildings & Grounds 5 at the Fox Lake Correctional Institution. The position is outside of a certified bargaining unit.

4. On August 6, 1990, the appellant filed a first step grievance stating as follows:

I worked for DSFM from September 1979 through May 5, 1990, as a BCS II. BCS II's were reclassified effective April 8, 1990 but calculated June 17, 1990 and paid on July 2, 1990 for that period. I did not receive compensation for the period of April 8, 1990 through May 5, 1990 while working for DSFM and my base pay did not reflect the increase.

Relief sought: To be paid for the period from April 8, 1990 through May 5, 1990[.] I want the compensation that is appropriate and my base pay adjusted.

5. In a letter dated August 20, 1990, DOA's Personnel Director wrote the Personnel Director for Fox Lake Correctional Institute as follows:

Thus, when he promoted to your agency on May 6, his last rate of pay with DOA should have been 16.160. We will be issuing him a check for \$240.96 for the pay difference from April 8, 1990 to May 5, 1990. I assume you will likewise be correcting his current hourly wage with this new information.

6. The grievance was denied at the third step on November 12, 1990. The denial read: "DER Classification and Compensation Unit determined that you were not eligible for the increase."

7. On November 26, 1990, the appellant filed a fourth step non-contractual grievance with the Commission.

CONCLUSION OF LAW

The Commission lacks subject matter jurisdiction over this appeal.

DISCUSSION

The appellant seeks to grieve the decision denying his request for respondent to compensate him at a higher pay rate for the period from April 8 to May 5, 1990, and to adjust his base pay rate.

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

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

* * *

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

This matter clearly relates to appellant's wages. As a consequence, it is not grievable.

In addition to its authority as the fourth step in the non-contractual grievance procedure, the Commission also hears direct appeals of certain personnel transactions, including, under §230.44(1)(d), Stats:

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 may be appealed to the commission.

The dispute identified by the appellant relates to his rate of pay during the last month he was employed at the Department of Administration. While it also appears the appellant is alleging that his rate of pay during this period had an effect on his rate of pay while he is employed by the Department of Corrections, it cannot be said that the subject of the appeal is a personnel action which relates to the hiring process within the meaning of §230.44(1)(d), Stats. The hiring process for the position at Fox Lake was a completely separate personnel event and cannot serve as a basis for review of a preceding salary transaction.¹

¹One possible option available to the appellant for obtaining relief is to file a claim with the State Claims Board.

ORDER

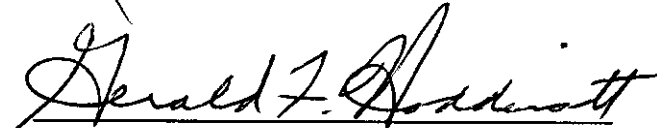
This matter is dismissed for lack of subject matter jurisdiction.

Dated: February 8, 1991 STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

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DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

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