STATE OF WISCONSIN PERSONNEL COMMISSION

JOHN J. KRUEGER,

Appellant,

v.

President, UNIVERSITY OF WISCONSIN SYSTEM,

Respondent.

Case No. 91-0171-PC

DECISION
AND
ORDER

This matter is before the Commission on the respondent's motion to dismiss. The parties have had an opportunity to file briefs.

The appeal arises from the decision to reduce the status of the appellant's appointment from 50% to 30% of full-time. By letter dated May 28, 1991, the appellant was informed as follows:

> This letter will confirm that the 50% Electronics Technician 1 position you occupy will be reduced to a 30% position beginning June 30, 1991. You may elect to continue your employment with UWC-Marathon County in this 30% position.
>
> If you choose not to retain employment in the 30% position, you will be laid off at that time unless you are able to secure alternative employment.
>
> If you are laid off, the options available to you under the collective bargaining agreement are transfer, bumping, voluntary demotion or separation. Please refer to Article VIII of the agreement for an explanation of your rights and responsibilities.

The appellant filed a first step contractual grievance on May 31, 1991 After the grievance was denied, the second step was waived and on June 13th, the appellant filed a third step grievance, alleging violations of articles 2, 3, 8 and 11 of the collective bargaining agreement. The grievance was denied on August 14th. The appellant filed a letter of appeal with the Commission on August 26, 1991.

Appellant's Electronic Technician 1 position is within the technical bargaining unit, and is covered by the collective bargaining agreement be-

tween the State of Wisconsin and AFSCME Council 24, Wisconsin State Employees Union.

Pursuant to §111.93(3), Stats.:

> [I]f 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, as well as rules and policies of the board of regents of the university of Wisconsin system, related to wages, fringe benefits, 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.

The appellant contends that Article 10, Paragraph 1 of the bargaining agreement provides the Commission with jurisdiction over this matter. That provision of the bargaining agreement reads:

> The Personnel Commission may at its discretion appoint an impartial hearing officer to hear appeals from actions taken by the Employer under Section 111.91(2)(b)1 and 2 Wis. Stats.
>
> "1. Original appointments and promotions specifically including recruitment, examinations, certification, appointments and policies with respect to probationary periods.
>
> 2. The job evaluation system specifically including position classification, position qualification standards, establishment and abolition of classifications, and allocation and reallocation of positions to classifications, and the determination of an incumbent's status resulting from position reallocations."

Until it was repealed by 1987 Wisconsin Act 331, the Commission had authority pursuant to §230.45(1)(f), Stats., to "[r]eview and act on decisions of impartial hearing officers under s. 111.91(3)" which in turn permitted the employer and labor organization to agree to "provide for an impartial hearing officer" to hear appeals arising from §111.91(2)(b)1 and 2. With the repeal of §111.91(3) and 230.45(1)(f), Stats., and the amendment of §111.91(2)(b)1 and 2 by 1987 Wisconsin Act 331, the Commission's authority in this area was eliminated. Even if, for the sake of argument, the Commission were to conclude that the contractual language granted jurisdiction to the Commission to review those transactions enumerated therein, the language of the agreement is too narrow to permit an appeal of either a reduction in hours or a layoff. Neither a layoff nor a reduction in hours are among the transactions listed in Article 10,

Paragraph 1. Therefore, the contractual language cannot serve as a basis for the Commission to assert jurisdiction in this matter.

To the extent that the subject of this appeal is a layoff decision, the Commission's jurisdiction over layoffs[1] is founded in §230.44(1)(c), Stats., which provides:

> (c) Demotion, layoff, suspension or discharge. If an employe has permanent status in class, or an employe has served with the state or a county, or both, as an assistant district attorney for a continuous period of 12 months or more, the employe may appeal a demotion, layoff, suspension, discharge or reduction in base pay to the commission, if the appeal alleges that the decision was not based on just cause.

The time limit for filing an appeal under §230.44, Stats., is "within 30 days after the effective date of the action, or within 30 days after the appellant is notified of the action, whichever is later...." §230.44(3), Stats. Here, the appellant was notified no later than May 31st (the date of his first step grievance) and the effective date was June 30, 1991. Therefore, his appeal to the Commission, filed on August 26th was not timely.[2]

---

[1]The Commission need not address the question of whether an employe within a bargaining unit may appeal a layoff decision under §230.44(1)(c), Stats., because, as is explained below, the appellant's appeal was not timely filed.

[2]In the event the appellant were to contend that the personnel action he is seeking to appeal falls within one of the other provisions of §230.44(1), Stats., the time requirement set forth in §230.44(3), Stats., would still act to bar the appeal.

ORDER

This matter is dismissed for lack of jurisdiction.

Dated: October 17, 1991 STATE PERSONNEL COMMISSION

LAURIE R. MCCALLUM, Chairperson

KMS:kms

DONALD R. MURPHY, Commissioner

GERALD F. HODDINOTT, Commissioner

Parties:

John J. Krueger
27 Wilson Avenue
Rothschild, WI 54474

Kathryn Lyall, Acting President
UW System
1700 Van Hise Hall
1220 Linden Drive
Madison, WI 53706