

STATE OF WISCONSIN

PERSONNEL COMMISSION

\* \* \* \* \*

STEVEN R. SCHNEIDER,

Appellant,

v.

Secretary, DEPARTMENT OF  
CORRECTIONS,

Respondent.

Case No. 94-0261-PC

\* \* \* \* \*

DECISION  
AND  
ORDER

This matter is before the Commission at the fourth step of the non-contractual grievance procedure. The respondent filed a motion to dismiss for lack of subject matter jurisdiction.

In his letter of appeal to the Commission, the appellant describes his grievance as follows:

I filed a grievance report on 06/10/93, which was waived to 3rd step.

This grievance was recieved back by myself on 07/16/94 from Tom Garcia, denied.

The grievance that I filed is in reference to the 91-93 Compensation Plan, Section A, Chapter 4.03.

During Pay Period 12 (05/16/93 - 05/29/93), I worked 25 hours in excess of my normally assigned hours of work, to supervise staff training.

I'am requesting payment of time and a half for these hours worked as is stated in the Compensation Plan.

I'am a supervisor at a pay range 12.

I was directed to work additional hours.

I was supervising employees who were also directed to work additional hours.

The additional hours of the employees did generate overtime.

The additional hours worked by both myself and the employees were generated by the same cause.

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. 230.04(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.

Appellant explains his contention as follows:

I'am not asking for a change of my wages or hours of work, nor am I asking for any fringe benifits. I'am asking for the interaction by your commission into this matter due to the fact that the guidelines have already been established in the 91-93 Compensation Plan. However the Department of Corrections is declining to abide by those directives set forth by the plan.

This case has some similarities to Loomis v. Wis. Pers. Comm., 179 Wis.2d 25, 505 N.W.2d 462 (Ct. App., 1993). In that case the employe, a maintenance supervisor, claimed that he was entitled to compensation when he carried a pager for emergency calls. The supervisor noted that, in his absence, a maintenance mechanic who was assigned the pager would get paid under his labor agreement. The court overturned the Commission's decision (Loomis v. UW, 92-0035-PC, 4/1/92) to dismiss the case for lack of subject matter jurisdiction. The Commission had concluded that the "grievance clearly relates to the hours he

is required to serve in stand-by status and the fact that he is not paid while in that status." The court reasoned as follows:

The basis of Loomis' grievance deals with the fact that his job requires him to carry a pager and to remain on call outside of his regular working hours throughout the entire year. Loomis complained that he was not informed of this job requirement until two months after he was hired. This portion of his grievance clearly relates to a "condition of employment" which the commission expressly has jurisdiction to consider under Wis. Adm. Code sec. ER 46.03(1). By implication it also suggests that Loomis is grieving this matter in order to have the burdensome restriction lifted or altered.

However, we acknowledge that Loomis' grievance also alleges that others who have been given similar responsibilities receive additional compensation. The nature of this complaint is clearly related to wages, which Loomis expressly stated in his request for relief as follows:

It seems highly unethical and inequitable for a Maintenance Supervisor to receive less compensation than a classified staff.... I request that I be compensated for these added duties either in the form of standby pay or comp. time.

The commission clearly lacks jurisdiction to consider such a remedy under Wis. Adm. Code sec. ER 46.03(2)(k) because it relates to wages.

Therefore, when considering the grievance in its entirety, the exact nature of the relief sought by Loomis is uncertain. However, giving the grievance the liberal construction it is entitled, we are certain that it alleges matters relating to a condition of employment. While the commission does not have jurisdiction to consider claims for relief involving wages, the commission does have jurisdiction to consider claims for relief involving conditions of employment, such as the job requirement complained of by Loomis in this case. 179 Wis.2d 25, 30-31


In the present case, the appellant does not identify a condition of employment comparable to the requirement that he carry a pager. The sole problem alleged by the appellant is that the respondent did not abide by the guidelines established in the compensation plan and, as a consequence, did not pay him at the rate of time-and-a-half for the 25 hours he spent supervising staff training. This allegation is clearly analogous to the request in Loomis that the appellant there be paid for the time he spent carrying the pager. This

claim was deemed by the court to relate to "wages" and was found to be outside of the Commission's authority.

ORDER

This matter is dismissed for lack of subject matter jurisdiction.

Dated: September 9, 1994 STATE PERSONNEL COMMISSION

  
LAURIE R. MCCALLUM, Chairperson

KMS:kms  
K:D:temp-9/94 Schneider

  
DONALD R. MURPHY, Commissioner

  
JUDY M. ROGERS, Commissioner

Parties:

Steven R. Schneider  
DOW8605 Abbott Road  
Portage, WI 53901

Michael J. Sullivan  
Secretary, DOC  
P.O. Box 7925  
Madison, WI 53707-7925

NOTICE  
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW  
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

**Petition for Rehearing.** Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

**Petition for Judicial Review.** Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.)