

STATE OF WISCONSIN

PERSONNEL COMMISSION

JAMES L. BROOKS,
Appellant,

v.

**Secretary, DEPARTMENT OF
CORRECTIONS,**
Respondent.

**RULING
ON MOTION
TO DISMISS**

Case No. 00-0142-PC

This matter is before the Commission on respondent's motion to dismiss for lack of subject matter jurisdiction. The parties have had an opportunity to file briefs and the following facts are undisputed.

FINDINGS OF FACT

1. Prior to approximately July 18, 1999, respondent employed appellant as a Store Supervisor at Taycheedah Correctional Institution.
2. On or about July 18, 1999, appellant promoted to a position at Prairie du Chien Correctional Institution as a Purchasing Agent-Objective. This position is within a bargaining unit and is covered by a collective bargaining agreement between the State of Wisconsin and the Wisconsin Professional Employees Council.
3. The collective bargaining agreement settled on April 9, 2000, calls for certain wage adjustments.
4. On July 13, 2000, appellant filed an appeal with the Personnel Commission, contending he was entitled to back pay under the bargaining agreement.

CONCLUSION OF LAW

The Personnel Commission lacks subject matter jurisdiction over this appeal.

OPINION

This matter was filed as an appeal relating to appellant's rate of pay.

The Commission's statutory authority is set forth in §§230.44 and .45, Stats. This case is not before the Commission as part of the non-contractual grievance procedure, §230.45(1)(c), Stats., nor is it an appeal relating to hazardous duty pay under §230.45(1)(d), Stats. Of the remaining provisions giving the Commission authority to hear appeals of certain personnel transactions, none include the general topic of an employee's rate of pay¹ except §230.44(1)(d), which applies to "a personnel action after certification which is *related to the hiring process*." This language has been construed as providing the Commission with authority to review decisions establishing an appellant's *starting* salary. *Taddey v. DHSS*, 86-0156-PC, 6/11/87. However, the present case relates to back pay rather than appellant's starting salary. Even if the topic in the present case could be said to fall within the scope of §230.44(1)(d), Stats., the Commission's jurisdiction would be superseded pursuant to §111.93(3), Stats..

[I]f a collective bargaining agreement exists between the employer and a labor organization representing employees 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 .

For the reasons set forth above, the Commission issues the following

¹ The Commission lacks jurisdiction over an appeal of a decision not to award compensation add-ons to appellant's position. *Olson v. DHSS*, 88-0087-PC, 12/5/88. Per *Bauer v. DATCP & DER*, 91-0128-PC, 4/1/92, there is no jurisdictional basis on which the Commission can review the pay level during a period of an alleged acting assignment where there is no certification associated with filling the acting assignment. The Commission lacks jurisdiction over a decision denying the appellant's application for a salary add-on. *Marquardt v. DHSS & DER*, 89-0106-PC, 10/4/89. The Commission lacks jurisdiction over the denial of fringe benefits. *Buechner & Koberle v. DER & UW*, 85-0089-PC, 11/22/85. The Commission lacks jurisdiction over decisions regarding salary adjustments made in connection with reallocations. *Garr et al. v. DER*, 90-063-PC, etc., 1/11/91.

ORDER

This matter is dismissed for lack of subject matter jurisdiction.

Dated: October 4, 2000 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

KMS:000142Arul1.2


JUDY M. ROGERS, Commissioner

Parties:

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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 (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) 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. 2/3/95)