

STATE OF WISCONSIN

PERSONNEL COMMISSION

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ROBERT C. STELLICK, JR.,

Appellant,

v.

Secretary, DEPARTMENT OF
REVENUE, and
Administrator, DIVISION
OF PERSONNEL,

Respondent.

Case No. 79-211-PC

* * * * *

DECISION
AND
ORDER

NATURE OF THE CASE

This matter is before the Commission on a question of subject-matter jurisdiction following an evidentiary hearing limited to that question.

FINDINGS OF FACT

1. The appellant at all relevant times has been employed in the classified service by the Department of Revenue (DOR) as an Attorney 13 subject to a collective bargaining agreement.
2. The attorney pay plan is found in the state's compensation plan established pursuant to §230.12, Stats.
3. The appellant's anniversary date for regrade to regrade point B on the schedule was July 1, 1979, which was also the date the new compensation plan was to take effect.
4. By letter dated July 11, 1979, and received July 12, 1979, from an employe in the DOR Personnel and Employment Relations office, the

appellant was informed as follows:

"This is to advise, in conformity with attorney pay plan provisions, that you have been assigned to a new regrade point in the current compensation schedule.

Upon the recommendation of your division your position has been assigned to regrade point B. Such action entitles you to either an increase to the new regrade point or one step greater than your current pay, whichever is greater. As a result, effective July 1, 1979, your pay was increased to \$10.664 per hour (\$1856 per month)." Appellant's Exh. 1.

5. Because he questioned the accuracy of this information the appellant called several people in DOR.

6. He ascertained that the regrade salary figure had been calculated by using the pre-existing compensation plan.

7. He continued to pursue the matter as he felt that this was in error.

8. He eventually was referred to Michael Svehner, the "compensation coordinator" of the Division of Personnel.

9. The appellant spoke to Mr. Soehner by phone on July 13, 1979.

10. They discussed the transaction and its relationship to the Wisconsin State Attorney's Association Contract. Mr. Soehner said words to the effect that he would contact the state's bargaining team and would respond by letter to the appellant, which would form the basis of an appeal or grievance.

11. Mr. Soehner subsequently discussed the situation with the Division of Collective Bargaining, in part to determine whether there might have been something in the contract that he was not aware of that might affect the transaction.

12. Following this conversation and review he made a final decision and sent a letter to the appellant dated July 27, 1979, and received July 30, 1979, appellant's exhibit 2, which explained the rationale for the transaction.

13. The appellant, in reliance on the aforesaid conversation, filed an appeal with this Commission on August 17, 1979.

14. The determination of whether an attorney will move from one grade level to another is the sole function of the appointing authority.

15. The determination of the dollar amount of an employe's salary following a regrade is delegated by Division of Personnel to the appointing authorities, including DOR, but the ultimate responsibility rests with Division of Personnel.

16. The appellant did not receive final notice of the administrator's decision with respect to the transaction in question until July 30, 1979, when he received appellant's exhibit 2.

17. Article V, Section 1 of the agreements between the state and the Wisconsin State Attorney's Assn. for the periods 7/1/77-6/30/79, and 7/1/79-6/30/81 (Respondent's Exhibits 1 and 2) states as follows:

Section 1 Movement Through Pay Ranges

It is recognized by the parties that the establishment of pay schedules, the assignment and reassignment of classifications to pay ranges within the pay schedules, and the determination of the incumbent's status resulting from position reallocations, or promotions, are not negotiable.

Pay adjustments resulting from personnel transactions that have the same effective date shall occur in the following order: a) reallocation; b) regrade; c) probationary increases; d) promotional increase; e) economic pay adjustments; f) merit increase.

CONCLUSIONS OF LAW

1. This appeal was not untimely filed pursuant to §230.44(3), Stats.
2. The subject-matter of this appeal does not involve wages, hours and conditions of employment.
3. The Commission has jurisdiction over this appeal.

OPINION

The respondent argues that Appellant's Exhibit 1, the July 11, 1979, letter from Michael Kaphingst, constituted effective notice of the transaction. However, in light of the appellant's conversation with Michael Soehner on July 13, 1979, that letter could no longer be characterized as a final effective decision. This conversation, and particularly the reference to a letter which could serve as the basis for a possible appeal, provides the basis for a conclusion that the matter was not final but was being reconsidered as a result of the appellant's inquiry. Further, even in the absence of such a conclusion, the elements of an equitable estoppel are present, the appellant having reasonably relied on this conversation to his detriment.

The respondent's attorney argued at the hearing that an additional impediment to subject-matter jurisdiction exists, in that the question of order of making salary adjustments is bargainable. (This argument was not pursued in her post-hearing brief.) If the contention is correct, then the Commission's jurisdiction is superseded by §111.93(3), Stats:

"If a labor agreement exists between the state and a union representing a certified or recognized bargaining unit, the provisions of such agreement shall supersede such provisions

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of civil service and other applicable statutes related to wages, hours and conditions of employment whether or not the matters contained in such statutes are set forth in such labor agreement."

Where it applies, the effect of this statute is to supersede civil service appeals for represented employes; recourse as to the matters indicated in the statute is pursuant to the contract. See, e.g., Walsh v. UW, 80-109-PC (7/28/80).

The contract does include a section that sets forth the order in which "Pay adjustments resulting from personnel transactions having the same effective date shall occur"

The appellant suggests that this subject is non-bargainable and is set forth in the contract for informational purposes. The Commission agrees. The transactions included in the list include some about which bargaining clearly is prohibited, such as reallocations, probation, and promotions. The establishment of priorities of pay adjustments resulting from these personnel transactions involves a prohibited subject of bargaining. See §111.91(2), Stats.

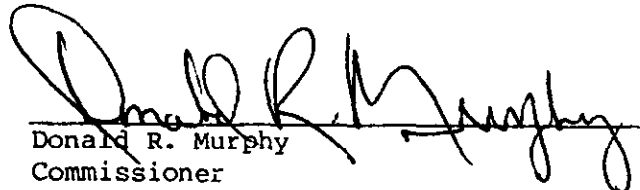
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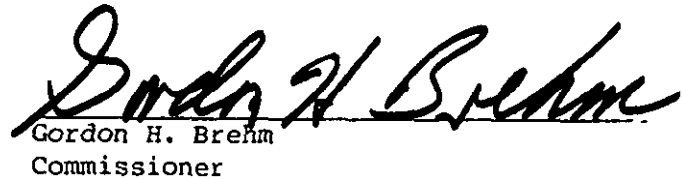
ORDER

The respondent's objections to subject-matter jurisdiction are overruled.

Dated: April 10, 1981.

STATE PERSONNEL COMMISSION


Donald R. Murphy
Commissioner


Gordon H. Brehm
Commissioner

AJT:jmg

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