

4. However, in May, 1981, the appellant was informed that his salary would not be red-circled unless he elected to bump downward into a classification in which permanent status had previously been acquired, which did not include Stock Clerk 2.

5. This notification was made prior to the appellant's acceptance of the voluntary demotion to the Stock Clerk 2 position.

6. At all relevant times, the appellant's position has been part of a certified bargaining unit represented by AFSCME, Council 24, AFL-CIO, and a collective bargaining agreement between the union and the state has been in effect.

CONCLUSIONS OF LAW

1. The Personnel Commission does not have subject-matter jurisdiction over the appeal due to s. 111.93(3), Wis. Stats.

OPINION

The Commission has subject-matter jurisdiction to hear cases relating to layoffs by an appointing authority as per s. 230.44(1)(d), Wis. Stats. This section empowers the Commission to hear such appeals when prosecuted by employes with permanent status in class. It is undisputed that the appellant has permanent status as a Meatcutter 2. It is also clear that the appellant is a member of a bargaining unit represented by the AFSCME, Council 24, Wisconsin State Employees Union. AFSCME has a labor agreement with the State of Wisconsin which has been in full force and effect at all times material to this appeal. Articles VII and VIII enumerated the employe's transfer and bumping rights in lieu of layoff.

Section 111.93(3), Wis. Stats. states clearly that provisions of a state-union labor agreement supersede civil service provisions related to wages, hours and conditions of employment.

"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 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."

In order to determine whether the instant case falls within s. 111.93(3), the Commission must determine whether this case involves "wages, hours, and conditions of employment," as that term is used in s. 111.93(3), Wis. Stats.

The Commission's predecessor, the State Personnel Board, in Olbrantz v. Earl, Case No. 75-9, pg. 3, held that a layoff constituted a "condition of employment."

The determination of an employe's salary upon a demotion in lieu of layoff constitutes "wages, hours, and conditions of employment." Section 111.91(1)(a), Wis. Stats. ("Subjects of Bargaining"), provides in part that ". . . procedures for the adjustment or settlement of grievances or disputes arising out of any type of disciplinary action referred to in s. 111.90(3) shall be a subject of bargaining." Section 111.90(3), Wis. Stats., includes the following enumeration of disciplinary actions:

"Suspend, demote, discharge or take other appropriate disciplinary action against the employe for just cause, or to lay off employes in the event of lack of work or funds . . ."

See also Dobbins v. DHSS, Wis. Pers. Com., No. 81-91-PC (6/3/81), which cited an attorney general's opinion OAG 65-78 (unpublished) to the effect that raised hiring rate and hiring above the minimum practices were not prohibited subjects of bargaining.

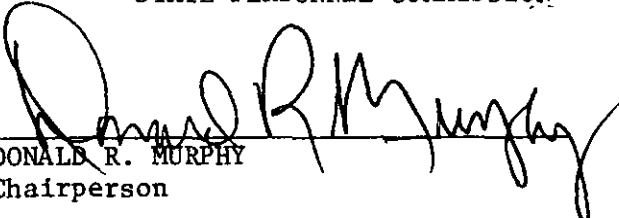
Since the Commission lacks jurisdiction over this matter, it will not reach the argument that the department is bound by its initial indication that the appellant's salary would be red-circled. However, it might be noted that it appears that this case is substantially different from Porter v. DOT, No. 78-154-PC (5/14/79), cited by the appellant. In that case, the Commission held that equitable estoppel prevented the respondent from withdrawing a wage offer that the employe had relied on in leaving another job and accepting the appointment from DOT. Here, the respondent notified the appellant of the mistaken information regarding his starting salary before he accepted the demotion in lieu of layoff. When he did accept the demotion, he was aware that his salary would not be red-circled, so he was not acting in reliance on the respondent's earlier, erroneous representation to that effect.


ORDER

This appeal is dismissed for lack of subject-matter jurisdiction.

Dated: October 30, 1981

STATE PERSONNEL COMMISSION


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Chairperson


CHARLOTTE M. HIGBEE
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