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PATRICIA MATULLE, *

Appellant, *

v. *

President, UNIVERSITY OF *

WISCONSIN SYSTEM (Oshkosh), *

Respondent. *

Case No. 81-433-PC *

* * * * *

DECISION
AND
ORDER

In an appeal filed with the Commission on November 11, 1981, the appellant sought review of an abandonment/resignation. It is apparent from her appeal letter and subsequent correspondence that the appellant is in a certified bargaining unit that is covered by a collective bargaining agreement. The Commission advised the appellant that her appeal raised a jurisdictional problem. Appellant, by her attorney, submitted written argument on the question of the Commission's jurisdiction over the appeal.

The statutory provisions regarding abandonment of a position are found in s.230.34(1), Wis. Stats.:

(a) An employe with permanent status in class may be removed, suspended without pay, discharged, reduced in base pay or demoted only for just cause.

(am) If an employe fails to report for work as scheduled or to contact his or her supervisor, the appointing authority may discipline the employe. If an employe fails to report for work as scheduled, or to contact his or her supervisor for a minimum of 5 consecutive days, the appointing authority shall consider the employe's position abandoned and may discipline the employe or treat the employe as having resigned his or her position. If the appointing authority decides to treat the position abandonment as a resignation, the appointing authority shall notify the employe in writing that the employe is being treated as having effectively resigned as of the end of the last day worked.

(ar) Paragraphs (a) and (am) apply to all employes with permanent status in class in the classified service, except that

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for employes in a certified bargaining unit covered by a collective bargaining agreement, the determination of just cause and all aspects of the appeal procedure shall be governed by the provisions of the collective bargaining agreement. (Emphasis added)

In the recent case of Petrus v. DHSS, 81-86-PC (12/3/81) the Commission concluded that it had jurisdiction over involuntary resignations under s.230.34(1)(am), Wis. Stats. However, in the Petrus case, there was no indication that the appellant was within a certified bargaining unit.

The Commission derives its jurisdiction over personnel matters from ss.230.44 and 230.45, Wis. Stats. However, any jurisdiction granted to the Commission by those sections is limited by the language of s.111.93(3), Wis. 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 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."

Both the superseding language of s.111.93(3), Wis. Stats., and the specific exclusion found in s.230.34(1)(ar), Wis. Stats., indicate that the provisions of the labor agreement preempt the exercise of any jurisdiction over this appeal by the Commission. This result is also consistent with the provisions of s.111.92(2)(c), Wis. Stats., which prohibit an employer from bargaining on:

"(c) Disciplinary actions and position abandonments governed by s.230.34(1)(a), (am) and (ar), except as provided in those paragraphs." (Emphasis added)

The exception would appear to specifically permit, if not require, bargaining on appeal procedures. (See also s.111.90(3) and s.111.91(1)(a), Wis. Stats.)

The appellant points out that she was terminated under the provisions of a statute that was passed after her labor agreement had been negotiated.*

*S.230.34(1)(am), Wis. Stats., was created by section 240, Chapter 221, Laws of 1979. The general effective date for Ch 221 was April 30, 1980. An anal-

The thrust of the appellant's argument is that she feels there should be a third requirement in order for the appeal procedures referred to in s. 230.34(1), Wis. Stats., to be governed by the contract. The additional requirement would be that the collective bargaining agreement must be negotiated prior to the effective date of s. 230.34(1)(am), Wis. Stats. The Commission recognizes that the time sequence of the statute and the contract may raise questions as to whether any existing contractual grievance procedures from the 1979 contract are to be applied to abandonment/resignation issues. However, the question of whether the Commission has jurisdiction over these matters is unaffected. The only questions before the Commission are whether the appellant is within a certified bargaining unit and whether a labor agreement exists. Section 230.34(1)(ar), Wis. Stats. The answers to both of these questions are apparent in appellant's letter of appeal and subsequent correspondence.

Appellant also sought to have her appeal reviewed by the Commission pursuant to s.230.45(1)(c), Wis. Stats., which requires the Commission to:

"(c) Serve as final step arbiter in a state employe grievance procedure relating to conditions of employment . . ."

As the Commission previously noted in Teggatz v. DHSS, Case No. 79-73-PC, (12/3/79), the provisions of ss. 230.45(1)(c) and 111.93(3), Wis. Stats., create "mutually exclusive remedies." Non-represented employes may appeal matters relating to "conditions of employment" to the Commission in its role as final step arbiter of the grievance procedure. However, for represented employes, all matters relating to "wages, hours, and conditions of employment" must be grieved under the contract's terms.

sis of the provisions of the legislation indicates that there was no special effective date to be applied to section 240., nor was there any qualification barring initial application of that provision to existing collective bargaining agreements. Section 223 (41), Chapter 221.

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The Commission is clearly prevented from exercising jurisdiction as a final step-arbiter under s.230.45(1)(c), Wis. Stats., over matters appealed by represented employees.

As a member of a certified bargaining unit, the appellant is precluded from appealing an abandonment/resignation decision to the Commission.

ORDER

The Commission lacks subject-matter jurisdiction over this appeal, and therefore, it is dismissed.

Dated: Jan 27, 1982

STATE PERSONNEL COMMISSION


KMS:nwb

Parties

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