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DIANE JOHNSON,
 Appellant,

v.
 Secretary, DEPARTMENT OF
 HEALTH AND SOCIAL SERVICES,
 Respondent.

Case No. 81-450-PC

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DECISION
 AND
 ORDER

This is an appeal of a noncontractual grievance filed by an employe not in a recognized bargaining unit. The respondent objects to subject matter jurisdiction on the ground that the grievance involves "hours" as opposed to "conditions of employment" as the latter term is used in §230.45(1)(c), stats. The parties have filed written arguments on the jurisdictional question with the Commission.

In her appeal letter, the appellant stated that the following were the "Facts upon which appeal is based:"

For approximately 1½ years, with management's approval, I worked from 4:30 p.m. to 6:00 p.m., four days a week, without a supervisor present. On August 31, 1981, I was informed that, beginning September 8, 1981, I would no longer work those hours because there was no supervisor present during those hours. That decision was based on interpretation of written Department and Division policy.

Section 230.45(1)(c), stats., states in part that the Commission shall "serve as final step arbiter in a state employe grievance procedure relating to conditions of employment..." (emphasis supplied). In Peggatz v. State of Wisconsin (Personnel Commission), Winnebago County Circuit Court No. 80CV1092 (1/8/82), the court in its discussion of this subsection distinguished wages, hours and conditions of employment. In DHSS v. Personnel Commission, State of Wisconsin (John Hovel), Dane County Circuit Court No. 79CV5630, (1/29/81), the court

stated that "...the terms 'wages,' 'hours' and 'conditons of employment' have come to be considered as distinct 'terms of art' in the field of labor-management relations..." and held that the term "conditions of employment" as used in §230.45(1)(c), stats., did not include "wages."

By the application of similar reasoning, if the subject matter of this appeal involves "hours," it would not be cognizable under §230.45(1)(c) as a "condition of employment."

It is clear, based on the plain language of the appeal, that this matter involves "hours." The appellant states that she was informed that she could no longer work certain hours because no supervisor was present. In her argument on jurisdiction, the appellant stated:

...the respondent has mistakenly identified the issue being grieved. I acknowledge that alteration of my work hours occurred. However, this was simply an action mandated by and conforming to the issue being grieved--the imposition of a condition of employment that a supervisor be present during all hours that an employe works.

In the opinion of the Commission, this argument constitutes a transposition of cause and effect. This is illustrated by the statement of "relief sought" in the appeal:

Reversal of the condition of employment that a supervisor be present during all hours that an employe works. Correspondingly, since the new condition was the only basis for the change in my schedule, I also seek return to my work schedule of 7:30 a.m. - 11:30 a.m., 12:00 noon - 6:00 p.m., Monday through Thursday each week.

ORDER


This appeal is dismissed for lack of subject matter jurisdiction.

Dated: June 10, 1982 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson


LAURIE R. McCALLUM, Commissioner

AJT:jmf


JAMES W. PHILLIPS, Commissioner

Parties:

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