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 DENNIS STARAL,
 Appellant,
 v.
 President, UNIVERSITY OF
 WISCONSIN SYSTEM,
 Respondent.
 Case No. 82-146-PC
 * * * * *

DECISION
 AND
 ORDER

The appellant seeks review of respondent's decision to reduce his salary upon demotion in lieu of layoff. The respondent raised a jurisdictional objection and both parties have been provided the opportunity to file briefs.

In his letter of appeal, the appellant states, in part:

On the basis of the June 9, 1982 letter that I received from Ms. Barbara J. Faucett (see enclosure), I am filing an appeal to the State Personnel Commission. This letter constitutes that appeal.

The specific area of appeal is in reference to "Red Circle Pay Rates."

It is my understanding that subsections 2 and 3 of Section 2017 of Chapter 317, Laws of 1981, (Senate Bill 783, Budget Adjustment Bill), which became effective May 1, 1982, eliminates certain Red Circling Pay Provisions from the layoff procedure for non-represented employees.

* * *

This Act (Bill) obviously discriminates against individuals who have given many years of quality service to the State of Wisconsin

* * *

The "non-represented" employee is being discriminated against vs. the "represented" employee.

* * *

Therefore, I am asking that you approve this appeal, and that I be granted the right to maintain my present rate of pay (12.181/HR.).

The letter referred to by the appellant from Ms. Faucett identifies alternatives in lieu of layoff and states, in part:

Your classification Educational Services Assistant 3 - Supervisor is in pay range SRL-14.

* * *

In your case, the highest level attainable through the transfer, displacement, or demotion processes is the Educational Services Assistant 1 position occupied by Joan LaMack. Therefore, I am offering you the position effective June 27, 1982.

* * *

Because non-represented employees being demoted or exercising displacement rights in lieu of layoff cannot receive a rate of pay in excess of the pay category maximum, your salary will be reduced to \$10.774 an hour. You will immediately receive permanent status in class as an Educational Services Assistant 1.

Chapter 317, Laws of 1981 was published on April 30, 1982, and section 2015 specifically provides that the pay of nonrepresented employees who demote in lieu of layoff may be reduced to the maximum in their new pay range without the possibility of appeal:

(2) COMPENSATION UPON DEMOTION OR DISPLACEMENT. (a) Notwithstanding the authority of the administrator of the division of personnel in the department of employment relations to promulgate rules under section 230.05(5) and 230.34(2) of the statutes, no nonrepresented employee in the state classified service who, in lieu of layoff, on or after the effective date of this act is demoted or exercises the right of displacement may receive compensation greater than the maximum of the pay range for the position which the employee obtains by demotion or displacement.

(b) Nothing in section 230.44(1)(c) of the statutes authorizes an appeal to the personnel commission based on a reduction in pay under this subsection.

(c) This subsection does not apply after the general effective date of the 1983-85 budget act.

The above provisions became effective on May 1, 1982, or the day after the publication of the law. Section 990.05, Wis. Stats.

Pursuant to s.230.44(1)(c), Wis. Stats., the Commission has general authority to hear appeals brought by nonrepresented employees of layoff decisions. The provisions of section 2015 of Chapter 317 clearly indicate that the Commission is barred from hearing the instant appeal under s.230.44(1)(c), Wis. Stats. A

Review of the Commission's other sources of jurisdiction in ss.230.44 and .45, Wis. Stats., uncover no provision that could serve as a jurisdictional basis for the appellant's case. Although the appellant argues that the effect of the new law (Chapter 317) is discriminatory, he fails to state that he is within a protected classification which would permit the Commission to treat this matter as a complaint of discrimination under s.230.45(1)(b), Wis. Stats.

The appellant argues that the provisions of Section 2015 conflict with s.230.44(1)(c), Wis. Stats., and that Chapter 317, Laws of 1981 "was invalidly adopted." It is clear that the new law supersedes rather than convicts with s.230.44(1)(c), Wis. Stats., insofar as the latter statute would permit the Commission to review a reduction in pay upon demition in lieu of layoff. In addition, the mere allegation of invalidity is not sufficient basis for declaring a statute void. Statutes are presumed to be valid and constitutional. See, generally, In re City of Beloit, 37 Wis. 2d 637, 155 N.W. 2d 633 (1968); White House Milk Co. v. Reynolds, 12 Wis. 2d 143, 106 N.W. 2d 441 (1960). If an appellant thinks that the legislature failed to follow the necessary procedures for enactment, he must specify those procedural requirements that are alleged not to have been satisfied. In the present case, the appellant failed to provide any analysis or explanation whatsoever of his statement that the statute was "invalidly adopted."


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ORDER

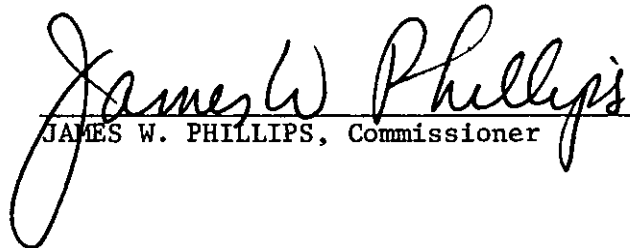
This matter is dismissed due to lack of subject matter jurisdiction.

Dated: September 30, 1982

STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson


LAURIE R. McCALLUM, Commissioner


JAMES W. PHILLIPS, Commissioner

KMS:ers

Parties

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