

* * * * *

PATRICIA LUCHSINGER, *

Appellant, *

v. *

Chairperson, PUBLIC SERVICE *

COMMISSION, *

Respondent. *

Case No. 82-233-PC *

* * * * *

DECISION
AND
ORDER

This matter is before the Commission on respondent's motion to dismiss for lack of subject matter jurisdiction. Both parties, through counsel, have filed briefs.

This is an appeal of a denial of a non-contractual grievance. The appellant on December 24, 1982, filed a "motion to amend appeal" and an "amended appeal." This motion has not been opposed and will be granted.

In her amended appeal, the appellant alleges as follows:

Patricia Luchsinger, by her attorneys, ANTONIEWICZ & GREGG, appeals a denial of compensation for overtime hours worked. This appeal is pursuant to Wisconsin Statutes, s.230.45(1)(a) and (c), Pers. 5.06(3), the Compensation Plan 1981-83, and Pers. 24.04(c)(2).

Appellant was authorized by her supervisor, Jim McKennon to work overtime hours, and was promised compensation for these hours. She has not been paid and has grieved this action without avail. The denial of overtime pay is without just cause and is an incorrect interpretation and/or unfair application of a specific rule, and relates to appellants conditions of employment.

Pers. 5.06(3) covers appellants overtime until March, 1982. The Compensation Plan 1981-82 (effective March, 1982) covers subsequent overtime. Both are rules pursuant to Wisconsin Statutes, s.230.12 and s.230.05(2). Agency violations there under are appealable to the Commission under s.230.45(1)(a) and (c).

In addition appellant alleges that the denial of overtime compensation was perpetrated by her supervisor Mr. McKennon as a form of retribution after she had reported mismanagement and abuse of authority to his superiors and the PSC personnel staff. This is in violation of Pers. 24.04(c)(2).

The Commission's jurisdiction over non-contractual grievances is set forth in s.230.45(1)(c), stats., which provides for the Commission to:

"Serve as final step arbiter in a state employe grievance procedure relating to conditions of employment, subject to rules of the secretary providing the minimum requirements and scope of such grievance procedure."

In DHSS v. Personnel Commission (Hovel), Dane County Circuit Court No. 79 CV 5630 (1/29/81), the court held that this Commission lacked jurisdiction under s.230.45(1)(c), stats., of an appeal of a non-contractual grievance involving the determination of Mr. Hovel's starting salary, since the matter had to do with the subject of "wages," rather than "conditions of employment," as required by s.230.45(1)(c). The Court noted:

"... the terms 'wages,' 'hours' and 'conditions of employment' have come to be considered as distinct 'terms of art' in the field of labor-management relations. See, c.f., secs. 111.33, 111.06 (1)(c), 111.91(1), Stats. The instant statute s.230.45(1)(c) however, employs only the broad language 'conditions of employment' with no clarifying language."

Clearly, the denial of compensation for overtime hours is a matter involving "wages," in the sense that the term is used above, and is not a "condition of employment." The appellant argues that the denial of overtime compensation was a form of retribution, and that "Being subjected to ongoing supervision that is based upon retribution certainly effects conditions of employment." This approach would blur any distinction between "wages," "hours," and "conditions of employment." Anything having to do with "wages" and "hours" can be said to have an effect on "conditions of employment," if the latter term is used in the broadest sense. However, as pointed out by the court in the foregoing case, these terms have come to be considered as distinct "terms of art," and the appellant's argument would require that "wages" and "hours" be considered as included under "conditions of employment."

The appellant alleges that the respondent violated certain rules of the administrator. However, if the appeal is not cognizable under s.230.45(1)(c) as involving a "condition of employment," whether it alleges a rule violation is immaterial to the question of subject matter jurisdiction, which is controlled in the first instance by the language of the statute.

ORDER

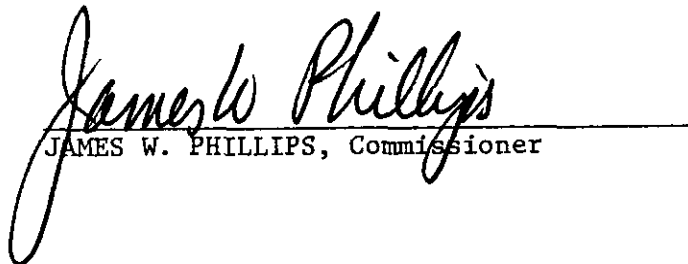
The appellant's "motion to amend appeal" filed December 24, 1982, is granted. This appeal is dismissed for lack of subject matter jurisdiction.

Dated: January 31, 1983

STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson


LAURIE R. McCALLUM, Commissioner


JAMES W. PHILLIPS, Commissioner

AJT:ers

Parties

Patricia Luchsinger
6946 French Town Rd., Rt. 1
Belleville, WI 53508

Stanley York
Chairperson, PSC
4th Floor, 4802 Sheboygan Ave.
Madison, WI 53702