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 *
 DAVID WING, *
 *
 Appellant, *
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 v. *
 *
 President, UNIVERSITY OF *
 WISCONSIN SYSTEM, *
 *
 Respondent. *
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 Case No. 82-75-PC *
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DECISION
 AND
 ORDER

This matter is before the Commission for resolution of respondent's objection to subject matter jurisdiction.

This is an appeal of the denial of a non-contractual grievance. At the pre-hearing conference held in this matter, the respondent raised a question as to what actually was the subject matter of the grievance. The conference report, dated April 19, 1982, stated that Mr. Wing would "... submit in writing ... a statement setting forth with specificity the subject matter of his appeal." Thereafter, Mr. Wing filed his statement of May 5, 1982, the respondent filed jurisdictional objections, and both parties submitted written arguments.

In his foregoing statement, Mr. Wing stated in part as follows:

"I contend there has been violations of the State of Wisconsin equal employment opportunity, the merit principle and political discrimination policie(s) in my continuing attempts to secure employment with other state employeseg. U.W. Milwaukee (Letter received 2/2/82 - Grievance filed 2/15/82 timely) ..."

Pursuant to s.230.45(1)(c), stats., the Commission is 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." (Emphasis supplied) In the absence of such rules the Commission has looked to the pre-existing rules of the administrator and the Administrative Practices Manual issued pursuant thereto. While the APM

contains certain requirements that must be satisfied before a grievance is appealable to the fourth step, such as that it must allege a violation of the civil service code, the threshold requirement for an appeal to be cognizable pursuant to s.230.45(1)(c), is that it relate to conditions of employment, in accordance with the statute. See DHSS v. Personnel Commission, State of Wisconsin (Hovel), Dane County Circuit Court No. 79CV5630 (1/29/81).

The term "conditions of employment" is used frequently in the Wisconsin Statutes. As was pointed out in the Hovel case, "... 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."

In the context of labor-management relations, the term "wages, hours and conditions of employment" is synonymous with mandatory subjects of bargaining. See, e.g., Beloit Education Assoc. v. WERC, 73 Wis. 2d 43, 50, 242 N.W. 2d 231 (1976); Unified S.D. No. 1 of Racine Co. v. WERC, 81 Wis. 2d 89, 95-96, 259 N.W. 2d 724 (1977); City of Brookfield v. WERC, 87 Wis. 2d 819, 929-30, 275 N.W. 2d 723 (1979).

Subsection 230.45(1)(c), stats., was created by Chapter 196, Laws of 1977. Given the then long-standing usage of the term "conditions of employment," the *Commission must assume* that if the legislature intended it in this enactment to have a different meaning, such would have been reflected in the text of the statute itself.

Inasmuch as the appellant has alleged that the respondent interfered improperly with his attempt to secure employment at UWM, the question is whether that involvement may be said to constitute a "condition of employment" or mandatory subject of bargaining.

The appellant has not specified in exactly what manner the respondent allegedly has violated the law in connection with his attempts to secure employment with other state agencies, particularly, the UW-Milwaukee. However, the general area denominated as "management rights," see s.111.90, stats., provides that:

"Nothing in this subchapter shall interfere with the right of the employer, in accordance with this subchapter to:

* * *

(2) Manage the employes of the agency, hire, promote, transfer, assign or retain employes in positions within the agency..."

In Subchapter V of Ch. 111, stats., the term "employer" is defined as "... the state of Wisconsin.", s.111.81(16), stats., Therefore, the management right of hiring employes runs to the state as a whole. Action by one part of the UW System with respect to another part as to a hiring decision must be included within this concept of management rights.

Categorization of the subject matter of this grievance as included within "management rights" is not affected by the allegations of illegality. The statute defining management rights describes the subject matter in general terms and does not restrict it by incorporating the requirement of compliance with the civil service code or other statutes, for example. In other words, the power to hire does not depend for its status as a management right on whether or not it is exercised in a particular manner.

Since the hiring process is concluded to be a management right, it is not a mandatory subject of bargaining and not a "condition of employment."

It is conceivable that the subject matter of this appeal could be considered appealable pursuant to s.230.44(1)(d), stats., However, the Commission need not reach that question because the appeal was not filed with the Commission within 30 days of the date Mr. Wing was notified of his denial (February 2, 1982), and


the appeal was not timely filed. See s.230.44(3), stats. Pursuant to this provision, an appeal not filed within this time period "may not be heard." This or predecessor language has been interpreted as mandatory and jurisdictional in nature, so that failure to file with the Commission within the prescribed period absolutely cuts off the Commission's power to hear the matter. See, Odau v. Personnel Board, 250 Wis. 600 (1947); State of Wisconsin ex rel DOA v. Personnel Board, Dane County Circuit Court No. 149-295 (1976).

ORDER

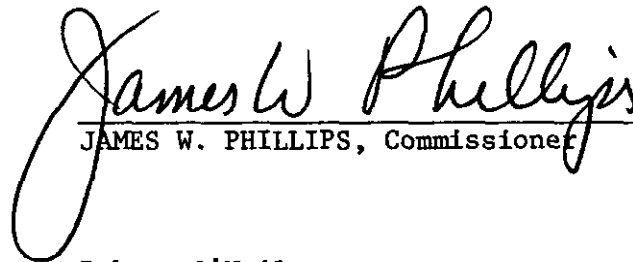
This appeal is dismissed for lack of subject matter jurisdiction.

Dated: September 30, 1982

STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson


LAURIE R. McCALLUM, Commissioner


JAMES W. PHILLIPS, Commissioner

AJT:ers

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