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ALBERT ZEIER,  
MAYNARD FOGELBERG,  
  
Appellants,  
  
v.  
  
Secretary, DEPARTMENT OF  
HEALTH AND SOCIAL SERVICES,  
  
Respondent.  
  
Case Nos. 83-0057-PC  
83-0067-PC

\* \* \* \* \*

DECISION  
AND  
ORDER

Respondent moved for dismissal of the above matters, due to lack of prosecution and lack of subject matter jurisdiction. A briefing schedule was established. The facts set out below appear to be undisputed.

FINDINGS OF FACT

1. Both of the appellants have been employes of respondent DHSS for over twenty years.
2. Until March 7, 1983, the appellants were employed as Institution Aides 2 at the Mendota Mental Health Institute (MMHI). They were paid at the hourly rate of \$8.609. On March 7, 1983, they were promoted to Institution Aides 3.
3. The appellants understood that if they found it necessary to demote back to the Aide 2 level, their pay would return to the former level of \$8.609.
4. On March 26, 1983, before they had completed probation at the Aide 3 level, the appellants voluntarily demoted from their new positions and were reinstated at the Aide 2 level.

5. Upon return to the Aide 2 level, the appellants' wages were set at the maximum of the Aide 2 pay range, or \$8.529 per hour.

6. The appellants filed separate appeals to the Commission "in regard to [their] recent demotion and the resulting rate of pay."

7. The appellants' positions are covered by a collective bargaining agreement.

#### CONCLUSION OF LAW

The Commission lacks subject matter jurisdiction over these appeals.

#### OPINION

The Commission's jurisdiction over appeals from personnel transactions is founded upon the provisions of §§230.44 and .45, Stats. A review of these provisions indicates that they do not provide the Commission with the authority to review the instant appeal. The fixing of an employe's compensation is the responsibility of the appointing authority, pursuant to §230.06(1)(b), Stats. Therefore, the decision in this matter was not made by the Administrator, Division of Personnel nor was the action delegated by the Administrator to the appointing authority, §230.44(1)(a) and (b), Stats. (1981-82). The transaction in question is also not a post-certification decision relating to the hiring process (§230.44(1)(d), Stats.) and it was not appealed to the Commission via the non-contract grievance procedure under §230.45(1)(c), Stats. None of the other provisions in §230.45, Stats., is relevant to the issue in the present case.

In §230.44(1)(c), Stats., the Commission is granted the authority to review a "demotion, layoff, suspension, discharge or reduction in base pay" if the appellant has permanent status in class and alleges that the transaction was not based upon just cause.

A further restriction on such appeals is found in §230.34(1)(ar), Stats., which states, in part:

[F]or 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.

The appellants' positions are covered by a collective bargaining agreement. Therefore, if the appellants would be able to show that they suffered a reduction in base pay without just cause, any appeal would have to follow the procedure established in the contract.

The appellants contend that their appeals do not involve arbitrable subjects within the scope of the grievance procedure set forth in the collective bargaining agreement. Prior decisions issued by the Commission suggest that this contention is not dispositive. In Matulle v. UW, Case No. 81-433-PC (1/27/82), the Commission ruled that it lacked jurisdiction to review an abandonment/resignation decision filed by an employe in a certified bargaining unit even though the law which permitted an agency to consider an employe's position to have been abandoned was passed after the appellant's labor agreement had been negotiated:<sup>FN</sup>

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 §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 §230.34(10(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.

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<sup>FN</sup> The decision issued by the Commission in the Matulle case was reviewed in Matulle v. State Personnel Commission, Case No. 82-CV-207 (Winnebago County Cir. Ct). The Court upheld the Commission's finding of no jurisdiction and ruled that the decision was, in fact, arbitrable under the contract.

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. (emphasis added)

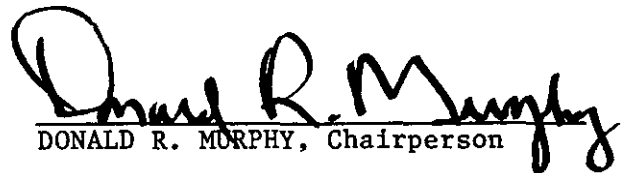
The mere fact that the appellants in the present case feel that the decision is not arbitrable under the terms of the collective bargaining agreement does not grant the Commission the authority to review the decision as long as the appellants are within the bargaining unit and a bargaining agreement is in effect. Both of those conditions have been met here. Whether or not the provisions of the bargaining agreement are broad enough to permit arbitration of a decision effectuating a reduction in base pay or of a decision setting the level of pay upon voluntary demotion is not an appropriate subject for the Commission's review.

In light of the Commission's conclusion as to its authority to hear this matter, a discussion of the respondent's motion to dismiss for lack of prosecution is unnecessary.

ORDER

This matter is dismissed for lack of subject matter jurisdiction.

Dated: September 16, 1983 STATE PERSONNEL COMMISSION

  
DONALD R. MURPHY, Chairperson

KMS:jmf

  
LAURIE R. McCALLUM, Commissioner

  
DENNIS P. MCGILLIGAN, Commissioner

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