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CHARLES SWENSON,  
 Appellant,  
 v.  
 Secretary, DEPARTMENT OF  
 AGRICULTURE, TRADE AND  
 CONSUMER PROTECTION,  
 Respondent.  
 Case No. 83-0152-PC

\* \* \* \* \*

DECISION  
 ON  
 PETITION  
 FOR REHEARING

This matter was initially filed as an appeal from an involuntary demotion. In a decision and order dated January 4, 1984, the Commission dismissed the appeal for lack of subject matter jurisdiction. The Commission cited §§111.93(3) and 230.34(1)(ar), Stats., to support the holding that it lacks authority to review those transactions enumerated in § 230.44(1)(c), Stats., where the employe is within a collective bargaining unit with a contract in effect. The Commission went on to note that the appellant had grieved his demotion to the third step under the contractual grievance procedure before filing his appeal and concluded:

The Commission has no authority to serve as the fourth step in the contract grievance procedure although it does have such authority as to some matters processed through the non-contract grievance procedure. See §230.45(1)(c), Stats.

On January 20, 1984, the appellant filed a petition for rehearing and reconsideration "on the grounds of material error."

Appellant contends that this issue is not covered by the contract, is appropriate for the non-contract grievance procedure, and is a proper subject for commission jurisdiction.

In support of his contention, the appellant referred to an affidavit prepared by the union's field representative who had been involved with the grievance.

The field representative stated that he had concluded "that the grievance issue was not covered by the contract, and was therefore, not an appropriate topic for the contractual grievance process and was nonarbitrable."

The two statutory provisions that are relevant to this petition for rehearing are §§ 230.45(1)(c) and 111.93(3), Stats., which provide:

§230.45(1) The Commission shall:

(c) 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.

§111.93(3) ... [I]f a labor agreement exists between the state and a union representing a certified or recognized bargaining unit, the provisions of such agreement shall supersede such provisions of civil service and other applicable statutes related to wages, hours and conditions of employment whether or not the matters contained in such statutes are set forth in such labor agreement.

The Commission has previously ruled that these statutory provisions preclude the Commission from acting as the fourth step for non-contract grievances filed by represented employes. In Teggatz v. DHSS, Case No. 79-73-PC (12/13/79)<sup>FN</sup> the Commission considered an appeal of a grievance filed by a represented employe who objected to certain duties he had been assigned. In its decision, the Commission concluded:

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<sup>FN</sup> A petition for judicial review of the Commission's decision was dismissed by the Winnebago County Circuit Court in Teggatz v. State Personnel Commission, 80CV1092 (1/8/82) due to improper service. In dictum, the court stated that the Commission's decision to dismiss the appeal for lack of subject matter jurisdiction had been correct.

If the assignment of job duties is perceived as a management right, as argued by the appellant, then it does not involve a "condition of employment" (which is a mandatory subject of bargaining pursuant to §111.91(1), Stats. (1977), and pursuant to §230.45(1)(c), Stats. (1977), is not subject to review by the Commission. If, on the other hand, the assignment of job duties was determined to involve a condition of employment, then the jurisdiction of the Commission is superseded or usurped by the provisions of §111.93(3), Stats. (1977), cited above. See, e.g., Olbrantz v. Earl, Wis. Pers. Bd., No. 75-9 (3/25/79).

The appellant has failed to offer any arguments as to why the Teggatz case and the provisions of §111.93(3), Stats., do not prevent him from grieving his demotion to the Commission under §230.45(1)(c), Stats. In the absence of any showing of a material error of fact or law, his petition for rehearing and reconsideration must be denied.

ORDER

Appellant's petition for rehearing and reconsideration is denied.

Dated: February 17, 1984

STATE PERSONNEL COMMISSION

Donald R. Murphy *sem*  
DONALD R. MURPHY, Chairperson

Laurie R. McCallum  
LAURIE R. McCALLUM, Commissioner

Dennis P. McGilligan  
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