

January 14, 1985, a briefing schedule was established with respect only to the question of whether the Commission has jurisdiction over the subject matter of the denial of expense reimbursement, with the understanding that after the Commission issues a decision on that issue, further proceedings would be determined.

Section 230.45(1)(c), Stats., provides that the Commission shall:

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.

The rules of the secretary referred to in the foregoing statute provide, in part, that an employe may not grieve "management rights," see §§ER 46.03(2)(j), 46.04(2), Wis. Adm. Code.

In the respondent's brief, it is argued that the matter of the denial of expenses in this case "involves a decision regarding the allocation of funds for departmental programs. As such, it is within the scope of management rights reserved to the Department under §ER46.04, Wis. Adm. Code... and as such it is not within the Personnel Commission's jurisdiction to hear complaints."

In support of this contention, the respondent has cited City of Brookfield v. WERC, 87 Wis. 2d 819, 275 N.W. 2d 723 (1979), and Beloit Education Assn. v. WERC, 73 Wis. 2d 43, 242 N.W. 2d 231 (1976). These cases hold that the line of demarcation between "conditions of employment" and "management rights" turns on whether the subject matter is "primarily" or "fundamentally" related to conditions of employment. This is known as the "primary relation test." See City of Brookfield v. WERC, 87 Wis. 2d at 829.

Applying the "primary relation test" to the case at hand, it cannot be said, at this stage of the proceeding and prior to hearing, that this case

involves a management right. The respondent attempts to characterize the decision as to the payment of appellant's expenses as part of "establishing a budget and allocating the expenditure of funds." However, it is questionable whether such a limited question as the approval or disapproval of travel expenses for the attendance of one employe at one conference could properly be characterized in that fashion, particularly when the appellant has alleged in his brief that: "This habitat workshop is in the approved training program (see attachment A) and the money was allotted to me for expenditure (see attachment B)."

At this stage of the proceedings, the respondent's objection to subject matter jurisdiction must be overruled, without prejudice to reasserting it if the evidence developed at the hearing should warrant it.

The Commission feels it is appropriate to point out that pursuant to §ER 46.07(1), Wis. Adm. Code, its authority over non-contractual grievances is limited by the following language:

... the [third step] decision may be grieved to the Commission only if it alleges that the employer abused its discretion in applying subch. II, ch. 230. Stats., or the rules of the administrator promulgated under that subchapter, the rules of the secretary promulgated under ch. 230, Stats., or written agency rules, policies, or procedures.... (emphasis added)

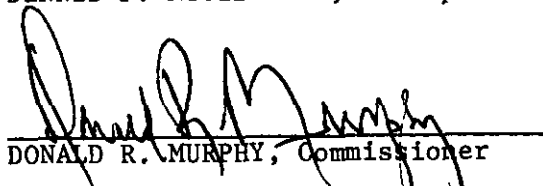
Pursuant to prior Commission decisions, if the appellant is in a position to make such an allegation with respect to the denial of expenses, he probably would be permitted to amend his appeal. See, e.g., Oakley v. Commr. of Securities, 78-66-PC (10/10/78); Huesmann v. State Historical Society, 82-67-PC (8/4/82). Notwithstanding this, it would appear to be fruitless to proceed to hearing on the issue of the denial of expenses if the appellant cannot make an allegation of the nature set forth in §ER 46.07(1), Wis. Adm. Code. Therefore, this aspect of the case should be discussed at the prehearing conference.

ORDER

The respondent's objection to subject matter jurisdiction is overruled without prejudice to renewal contingent on the factual record that may be made in this case. A prehearing conference is to be held as soon as possible.

Dated: April 12, 1985 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner


LAURIE R. MCCALLUM, Commissioner

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