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 *
 JAMES WOLFE, *
 *
 Appellant, *
 *
 v. *
 *
 President, UNIVERSITY OF *
 WISCONSIN SYSTEM (STEVENS *
 POINT), *
 *
 Respondent. *
 *
 Case No. 85-0049-PC *
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 * * * * *

DECISION
 AND
 ORDER

This matter is before the Commission on respondent's objection to subject matter jurisdiction. Both parties have filed briefs through counsel. The essential facts related to subject matter jurisdiction are not in dispute.

Until his resignation effective March 8, 1985, the appellant was employed by the respondent in the classified civil service as a Security Officer 3 at UW-Stevens Point. His position at all relevant times was part of a certified or recognized bargaining unit with respect to which a labor agreement has existed between the state and the Wisconsin State Employees Union, American Federation of State, County and Municipal Employees, AFL-CIO, Council 24, representing said bargaining unit. The appellant has alleged his resignation was tendered in lieu of discharge.

The appellant argues his resignation amounts to a constructive discharge appealable under §230.44(1)(c), Stats. The respondent argues this appeal is barred by the operation of §111.93(3), Stats. This subsection provides, in part, as follows:

"... if a labor agreement exists between the state and a union represented 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 agreement."

The Commission has interpreted this provision to mean that the civil service code process for the review of disciplinary actions is superseded by the terms of a contract. See, e.g., Swenson v. DATCP, Wis. Pers. Commn. No. 83-0152-PC (1/4/84); Matulle v. UW-Oshkosh, Wis. Pers. Commn. No. 81-433-PC (1/27/82), affirmed, Matulle v. State Personnel Commn, Winnebago Co. Circuit Court No. 82-CV-207 (11/19/82). See also, §230.34(1), Stats.:

"(a) An employe with permanent status in class may be removed, suspended without pay, discharged, reduced in base pay or demoted only for just cause.

* * *

(ar) ... for 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 appellant's only argument as to why his appeal is not foreclosed by these authorities rests on the respondent's response to his attempt to file a contractual grievance concerning his separation from state service. This response was set forth in the following letter:

The enclosed grievance form is being returned to you without a response at Step Three. Per Article 1/1/1 of the Security and Public Safety collective bargaining agreement, all rights, privileges and provisions "relate only to classified employes of the State of Wisconsin..."

According to my information, you resigned from your position of Security Officer 3 with the University of Wisconsin - Stevens Point, effective March 8, 1985. As such, you are no longer considered a classified employe of the State of Wisconsin and cannot be afforded the opportunity to utilize the established contractual grievance procedure.

For this reason the grievance is being returned to you and a hearing will not be scheduled.

The appellant makes the following argument:

"... attached hereto is a letter from Luis A. Garza to Mr. Wolfe dated April 11, 1985, with enclosure. It is obvious from this letter that the University of Wisconsin System has rejected the appellant's attempt to file a grievance under the collective bargaining agreement because of his resignation. Apparently, the University of Wisconsin System has taken the position that the appellant should file a grievance under the collective bargaining agreement rather than filing an appeal with the Personnel Commission on the one hand, but also takes the position on the other hand that the appellant cannot file a grievance under the collective bargaining agreement because he resigned from employment. We respectfully submit that the respondent cannot have it both ways. Since the appellant has had his attempt at filing a grievance rejected by the respondent, it cannot now argue that the Personnel Commission lacks jurisdiction to consider this appeal since the proper avenue for the appellant would be to file a grievance, which is a procedure totally unavailable to him."

In the opinion of the Commission, this argument cannot prevail. It is not argued, nor would it be argued, that the contract in question did not cover discharges. See §§230.34(1)(ar) and 111.91(1)(a), Stats. As noted above, the appellant has argued that his resignation was forced and amounts to a constructive discharge appealable to the Commission under §230.44(1)(c), Stats.¹ That the respondent took the position that the appellant

¹ Obviously he must make this argument since the Commission has no authority to hear appeals of resignations.

relinquished his right to have pursued a contractual grievance by his resignation² has no bearing on the Commission's authority to hear his appeal of an alleged constructive discharge under §230.44(1)(c), Stats.

In any event, it is clear from §111.93(3), Stats., and the Matulle case, that because a contract fails to cover a particular subject does not make it appealable to this Commission. So long as the subject matter of the appeal relates to a bargainable subject, the fact that it is not arbitrable under the contract is not material in the context of §111.93(3), Stats., which applies "... whether or not the matters contained in such statutes are set forth in such labor agreement." (emphasis supplied)

Because the Commission reaches the conclusion this appeal is barred by operation of §111.93(3), Stats., it does not reach the other matters raised by the respondent.

²The question of whether this interpretation and application of the contract was correct is not before the Commission.

ORDER


This appeal is dismissed for lack of subject matter jurisdiction as barred by the operation of §111.93(3), Stats.

Dated: September 26, 1985

STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson

DONALD R. MURPHY, Commissioner


LAURIE R. MCCALLUM, Commissioner

AJT:jgf
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