
EISELEY *
 JANE ~~EISELEY~~ (MAHER), *
 *
 Appellant, *
 *
 v. *
 *
 Secretary, DEPARTMENT OF *
 HEALTH AND SOCIAL SERVICES, *
 *
 Respondent. *
 *
 Case No. 85-0215-PC *
 *

DECISION
 AND
 ORDER

This appeal was filed with the Commission as the final step in the non-contractual grievance procedure. Respondent has objected to the Commission's jurisdiction over the subject matter of this appeal.

The Commission's jurisdiction over the non-contractual grievance procedure derives from §230.45(1)(c), Stats., which provides:

(1) The Commission shall:

* * *

- (c) Serve as final step arbiter in the state employe grievance procedure relating to conditions of employment, subject to rules of the Secretary providing minimum requirements and scope of such grievance procedure.

At all times relevant to this appeal, appellant has occupied a position within the Department of Health and Social Services (DHSS) authorized as a half-time position. On October 1, 1984, appellant's first-line supervisor requested that the appellant begin to work as many hours as possible in order to meet the heavy workload of the Low Income Energy Assistance Program. Appellant claims that, in response to such request, she worked approximately 1497 hours in 1984 and approximately 1851 hours in

1985. During this period of time, appellant's position continued to be authorized as a half-time position and appellant earned vacation, holiday, and length of service benefits accordingly. Appellant through her grievance seeks the following remedy: "... that I be made a full-time employe immediately and that I be fully compensated for all fringe benefits on a pro-rata basis for hours worked since October 1, 1984." That is, appellant feels she should have earned vacation, holidays, and length of service benefits on the basis of the hours she actually worked, rather than on the basis of the authorized funding level of the position, i.e., half-time or .5 FTE.

Respondent has objected to the jurisdiction of the Commission to decide this appeal on two bases:

- (1) The subject matter of this appeal does not involve "conditions of employment" within the meaning of §230.45(1)(c), Stats.
- (2) The subject matter of this appeal does not qualify as a "grievance" within the meaning of §ER 46.02, Wis. Adm. Code, since DHSS had no control over such subject matter.

Conditions of Employment

Respondent argues that vacation, holidays, and length of service benefits are not "conditions of employment" within the meaning of §230.45(1)(c), Stats. In an Interim Decision in Schmaltz v. DHSS & DER, Case No. 85-0067-PC (2/6/86), the Commission decided that vacation, sick leave and length of service benefits were "conditions of employment" within the meaning of §230.45(1)(c), Stats., as a result of the broad interpretation accorded such term in Chapter ER 46, Wis. Adm. Code. The Commission finds no basis for reaching a contrary conclusion in the instant appeal.

Grievance

Section ER 46.02, Wis. Adm. Code, provides in pertinent part:

(3) "Employer" means an agency defined under §230.03(3), Stats., in which the employe has been employed.

(4) "Grievance" means a written complaint by one or more employes acting as individuals, requesting relief in a matter of concern or dissatisfaction relating to their employment which matter is subject to the control of the employer and within the limitations of this chapter. (emphasis added).

Section 230.03(3), Stats. provides in pertinent part:

(3) "Agency" means any state board, commission, committee, council, department or unit thereof created by the Constitution or Statutes...

In the instant case, the "employer," for purposes of §ER 46.02, Wis. Adm. Code, is the DHSS. It is clear that the appellant occupied a position within the DHSS at all times relevant to this appeal and that the DHSS is an "agency" within the meaning of §230.03(2), Stats.

The remaining question then is whether the DHSS had control over the matter which forms the basis of the instant appeal.

As stated above, it appears from the information which has been provided to the Commission to be undisputed that the position occupied by appellant at all times relevant to this appeal was only authorized as a half-time position, i.e., as a .5 FTE, and that this did not change when appellant began working additional hours. There does not appear to be any authority in the statutes or administrative code for DHSS to decide whether a position should be half-time or more than half-time. Therefore, this aspect of the appeal is not "subject to the control of the employer" and is not a legally cognizable grievance under §ER 46.02(4), Wis. Adm. Code. However, the appointing authority (DHSS) does have the authority to determine an employe's fringe benefits, §§230.06(1)(b), 230.35(1)(a),

Stats., albeit "subject to this subchapter and the rules prescribed thereunder." §230.06(1)(b), Stats. Therefore, the appellant's request for prorated fringe benefits involves "matter... subject to the control of the employer....," and is a legally cognizable grievance under §ER 46.02(4), Wis. Adm. Code. The respondent's arguments that the statutes governing fringe benefits prohibit it from granting fringe benefits on a pro rata basis run to the merits of the grievance rather than to subject matter jurisdiction.

ORDER

So much of this appeal as relates to the request to change the status of appellant's position from one-half FTE is dismissed for lack of subject matter jurisdiction.

Dated: July 24, 1986 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson

LRM:jmf
ID11/3


DONALD R. MURPHY, Commissioner


LAURIE R. McCALLUM, Commissioner

Parties:

^{Eiseley}
Jane Eiseley (Maheer)
2201 West Lawn Avenue
Madison, WI 53711

Linda Reivitz
Secretary, DHSS
P. O. Box 7850
Madison, WI 53707

Howard Fuller
Secretary, DER
P. O. Box 7855
Madison, WI 53707