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BERNICE R. FRISCH et al,

Appellants,

v.

Secretary, DEPARTMENT OF  
HEALTH AND SOCIAL SERVICES  
and Secretary, DEPARTMENT  
OF EMPLOYMENT RELATIONS,

Respondents.

Case No. 86-0191-PC

\* \* \* \* \*

DECISION  
AND  
ORDER

Complainants are sixty-two employes<sup>1</sup> of respondent Department of Health and Social Services who received a third step response to their group grievance and lodged an appeal with the Commission on November 3, 1986.

The grievance report describes the grievance as follows:

The following people (list attached) feel that we are being treated unfairly in regard to the 1986 salary increase. The reasons are:

1. Non-represented employes are not being given their length of service pay.
2. Non-represented employes are having to pick up 1% towards their retirement and represented employes have theirs contributed by the state.
3. Non-represented employes who have reached their maximum are entitled to only a 4½% increase; represented employes can be given an increase above the maximum.

The grievants had sought the following relief:

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<sup>1</sup> The letter of appeal to the Commission was only signed by Bernice Frisch although it attached a photocopy of the third step grievance report form which was signed by sixty-one other individuals. Some of the signatures are illegible and Ms. Frisch's address was supplied to the Commission. No one other than Ms. Frisch filed materials with the Commission or participated in the appeal. Therefore, only Ms. Frisch is listed as an appellant for purposes of review. S. 227.47, Stats.

1. Non-represented employees are to be given their length of service pay as of June 30, 1986.
2. The state shall pick up the 1% retirement for non-represented employees also.
3. Non-represented employees shall be allowed to receive a pay increase above the maximum.

The third step response stated that respondent was "not able to grant the relief sought and for this reason must deny the grievance."

Respondent DER filed a jurisdictional objection and the parties were provided an opportunity to file briefs.

The Personnel Commission's jurisdiction over grievances is based on s. 230.45(1)(c), Stats., which reads as follows:

230.45 Powers and duties of personnel commission. (1) The Commission shall:

\* \* \*

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

The Secretary of the Department of Employment Relations (DER) has adopted administrative rules pertaining to the state employee grievance procedure. Those rules are found in Ch. ER 46, Wis. Adm. Code. Section ER 46.02, Wis. Admin. Code reads in pertinent part as follows:

ER 46.02 Definitions. In this chapter:

\* \* \*

(3) "Employer" means an agency defined under s. 230.03 (3), Stats., in which the employe is or 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.

(5) "Grievant" means an employe who has filed a grievance. (Emphasis added)

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

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

In the present case, the appellants all appear to be employes of the Department of Health and Social Services (DHSS) and, therefore, DHSS is the "employer" for purposes of s. 46.02(3), Stats. This means that appellants cannot file a grievance against other state agencies and that the Department of Employment Relations (DER) must be dropped as a party.


In addition, respondents contend that DHSS cannot control the subject matter of the grievance, i.e. length of service pay, the 1% retirement pick-up and limitation of salary increases for non-represented employes at the maximum of the pay range to across-the-board increases. Respondents suggest that these matters are all provisions of the 1985-87 Compensation Plan, adopted by DER pursuant to s. 230.12, Stats., and, therefore, are not matters "subject to the control of the employer [DHSS]". S. ER 46.02(4), Wis. Adm. Code. A review of s. 230.12 (1) (a) 2, Stats., shows that the compensation plan may "include provisions for supplemental pay and pay adjustments." Nothing indicates that the 1985-87 plan did not determine all those subjects that appellants seek to now place before the Commission pursuant to s. 230.45(1)(c), Stats. Because their employer, DHSS, cannot be said to control these matters, there is no "grievance" as that term is defined in s. ER 46.02(4), Wis. Adm. Code, and this matter must be dismissed. Schmaltz v. DHSS & DER, 85-0067-PC (7/25/86).

ORDER

This matter is dismissed for lack of subject matter jurisdiction.

Dated: March 18, 1987

STATE PERSONNEL COMMISSION

  
DENNIS P. MCGILLIGAN, Chairperson

  
DONALD R. MURPHY, Commissioner

  
LAURIE R. McCAELUM, Commissioner

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KMS:baj

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