

\* \* \* \* \*

GERARD H. BELL, \*

Appellant, \*

v. \*

Secretary, DEPARTMENT OF \*  
TRANSPORTATION, \*

Respondent. \*

Case No. 91-0098-PC \*

\* \* \* \* \*

FINAL  
DECISION  
AND  
ORDER

This matter involves an appeal pursuant to §§230.36(4) and 230.45(1)(d), stats., of a denial of hazardous employment injury benefits. Respondent has moved to dismiss on the ground of lack of subject matter jurisdiction, relying on §111.93(3), stats. Both parties have filed briefs.

The underlying facts relevant to subject matter jurisdiction do not appear to be disputed and are summarized in respondent's brief as follows:

The relevant facts are included in the attached affidavit. Briefly, the Appellant was and is a member of the Wisconsin State Patrol and of an affiliated local of AFSCME Council 24, Wisconsin State Employees Unit, AFL-CIO. The Appellant's collective bargaining agreement contained a provision applicable to employees who are injured while performing service for the employer. On April 25, 1991, appellant injured his hand. Pursuant to the collective bargaining agreement, he filed a claim on forms provided by the employer. The employer denied the claim. The Appellant appealed the matter through the grievance procedure provided in the collective bargaining agreement.

Independently he also filed, through his attorney, an "Administrative Appeal of Denial of Benefits" with the Personnel Commission under date of June 11, 1991, pursuant to sec. 230.36, Stats.

Section 111.93(3), stats., provides in relevant part:

[I]f a collective bargaining agreement exists between the employer and a labor organization representing employes in a collective bargaining unit, the provisions of that agreement shall supersede the provisions of civil service and other

applicable statutes . . . related to wages, fringe benefits, hours and conditions of employment whether or not the matters contained in those statutes, rules and policies are set forth in the collective bargaining agreement.

The effect of this subsection is to supersede those parts of the civil service code that control subjects which are part of the collective bargaining process. As can be seen by the facts of this case set forth above, the matter of hazardous employment injury benefits are part of the collective bargaining process affecting appellant. Therefore, the commission's jurisdiction over this matter which is set forth in §§230.36(4) and 230.45(1)(d), stats., is supplanted and superseded by the operation of §111.93(3), stats. See Wendt v. DHSS, No. 80-0110-PC (12/3/81).

Appellant argues:


Denying Trooper Bell the right to appeal to the commission to have a question of law determine [sic] would leave legal interpretation of Statutes and Administrative Code in the hands of lay people involved in the grievance procedure and would in effect deny Trooper Bell due process of law . . . . The legislature has not explicitly or impliedly taken away the right of members of the bargaining unit to have matters in law interpreted through the administrative process or courts of law.

This argument runs squarely into the legislative decision set forth in Subchapter V, Chapter 111, stats. (State Employment Labor Relations), and specifically in §111.93(3), stats., to permit collective bargaining for state employes, and, in order to make this meaningful, to require that the provisions of collective bargaining agreements and the workings of the grievance process supersede the provisions of state civil service law relating to bargainable subjects. Appellant cites no authority for the proposition that in explicitly so providing, Subchapter V, Chapter 111 runs afoul of the due process clause, and the commission is aware of none. In addition, as an administrative agency the commission has no authority to address a question of the facial constitutional validity of §111.93(3), Stats., see 1 AM JUR 2d Administrative Law §185.


ORDER

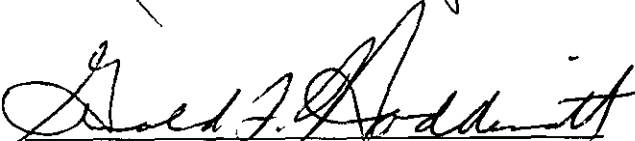
This appeal is dismissed for lack of subject matter jurisdiction.

Dated: October 17, 1991 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

AJT:gdt/1

  
DONALD R. MURPHY, Commissioner

  
GERALD F. HODDINOTT, Commissioner

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