

CHARLES J. LOOMIS,

Petitioner,

vs.

Case No.: 92-CV-277

PRESIDENT UNIVERSITY OF
WISCONSIN-SYSTEM and
WISCONSIN PERSONNEL COMMISSION,
Respondents.

DECISION

This is a Chapter 227 review of a Personnel Committee decision which dismissed petitioner's grievance on jurisdictional grounds. Petitioner is a maintenance supervisor at University of Wisconsin Center-Washington County. He is not a member of a union. After employment he was notified that he had to carry a pager at all times to be on call for any maintenance emergency. He filed a grievance, pro se.

I. LAW GOVERNING CASE.

A. Statutes and Rules.

§230.04(14), Wis. Stats., provides that the secretary of the Department of Employment Relations "shall establish, by rule, the scope and minimum requirements of a state employee grievance procedure relating to conditions of employment." Pursuant to this authority the secretary promulgated ER 46, Wis. Adm. Code, "Grievance Procedure." ER 46.03(1) indicates that the scope of grievance procedures covers "issues which affect (an employee's) conditions of employment..." ER 46.03(2) limits the grievance procedure; ER 46.03(k) excludes any grievance concerning "any matter related to wages, hours of work, and fringe benefits."

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ER 46.06 specifies a four step grievance procedure. §46.07 specifies that the fourth step is an appeal to the Personnel Commission. This was done in the present case. At all steps the grievance was rejected on the basis that it concerned "wages, hours of work..." and, therefore, was excluded under ER 46.03(2)(k). The grievance was processed pro se through the appeal to the Commission under §230.44, Wis. Stats. §230.87 provides that the decisions of the Commission are reviewable under Chapter 227.

B. Chapter 227 Appeals.

§227.52 et. seq. provides the procedures for appeals from administrative agencies. §227.57, Wis. Stats., specifies the scope of such review. §227.57(5) provides for review of a misinterpretation of a provision of law by an agency and directs the Court to correct any misinterpretation which may compel a particular action. In this case, if the Commission's interpretation of the statute and rule is incorrect, the Commission should hold a hearing on the grievance.

Numerous cases have interpreted Chapter 227 appeals. The most recent appears to be Jicha vs. DILHR, 169 Wis. 2d 284, 485 N.W.2d 256 (1992). The Court discusses the three levels of "deference to conclusions of law and statutory interpretations in agency decisions" (p. 290). (The Commission's conclusion that it lack jurisdiction to hear this grievance is headed "Conclusion of Law.") On the first level the agency is entitled to great weight in its interpretation where it has "experience, technical

competence, and specialized knowledge" which aids it in the interpretation. On the second level if the decision is "'very nearly' one of first impression..." it is entitled to "'due weight' or 'great bearing.'" If the issue is without agency precedence the court applies a "de novo standard..." (p. 291).

In any case when the issue is a question of law the Court is not bound by the administrative agency's conclusion. Sauk County vs. WERC, 165 Wis. 2d 406, 477 N.W.2d 267 (1991), at p. 413. In Local No. 695 vs. LIRC, 154 Wis. 2d 75, 452 N.W.2d 368 (1990) the Court followed this rule when it concluded that the Commission had no experience in interpreting the statute and this was a matter of first impression. Nothing presented to this Court by respondents indicates any prior commission precedent in this area.

II. DECISION.

For some reason, both in the briefs and oral argument, the attorneys spent more time criticizing each other than actually approaching the real issue. The issue is not whether the Court has the authority to rewrite the Secretary's rules. The Court does not have that authority. There certainly are procedures for attacking the rules but this type of appeal is not one of them. ER 46.03(2)(k) is clear. So is §230.04(14) and ER 46.01(1) which indicate that there shall be a grievance procedure "relating to conditions of employment."

Petitioner proceeded throughout the entire grievance procedure, including briefing the University System's motion to

dismiss, pro se. His grievance, which was filed February 11, 1992, with the Personnel Commission, was prepared by himself. Its operative language is "One of the additional responsibilities of this position require me to carry a pager and be on call 24hrs. a day 365 days a year." It indicates that he may not leave the signal range of the pager and has to be able to report to work within an hour if he cannot get someone else to cover an emergency. Unfortunately, petitioner then goes on to discuss the fact that he does not receive any extra "pay" for these responsibilities nor is he compensated in any way.

As more and more people seek to redress perceived wrongs without an attorney we are constantly confronted with pro se pleadings. The Appellate Courts have often advised Trial Courts to liberally interpret pro se pleadings and try to make sense of them to give them the proper legal effect. I see no reason why the Personnel Commission should not follow the same procedure. In fact, Attorney Sobota, in oral argument, indicated that the Commission did so when it made some references in the opinion to Mr. Loomis' statement about "breach of contract."

Petitioner's major complaint in the grievance is that he has to carry the pager 24 hours a day and be available at all times to report to the campus within 24 hours. If this is not "a condition of employment" I cannot envision what would be. The mere fact that he indicates in his written grievance that he is unhappy because he does not get any extra pay for this is not the major focus of the grievance. If the Commission's interpretation

that, because he mentions pay in his grievance, this comes under the "wages, hours of employment" exception in 46.03(2)(k) is correct, I agree with Mr. Sheedy's statement that there is practically no way anyone can get a grievance heard. The Commission has improperly interpreted the statute and rules. This is a condition of employment case, not a wages or hours case. While I believe this is the type of case that is in the third level of "deference" category, even if the Commission's conclusions should receive more "deference" from me, I would reach the same conclusion.

III. CONCLUSION.

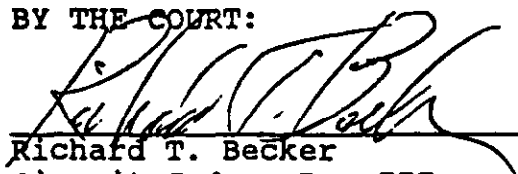
The Commission improperly categorized the grievance and concluded, as a matter of law, that it fell under the exception in ER 46.03(2)(k). The grievance raises a "conditions of employment" issue and should not have been dismissed on jurisdictional grounds. The decision of the Commission dismissing on jurisdictional grounds is, therefore, reversed. The Commission is ordered to provide a hearing to the petitioner on his grievance.

I have not addressed the merits of the grievance. Since the Commission did not address the merits I do not believe that the Court has that authority. Since I have ordered a reversal of the Commission and a remand for hearing I do not intend to address any of the other issues that were raised either in the pleadings, the briefs, or at oral argument.

Counsel for petitioner shall prepare an Order consistent with this decision.

Dated at West Bend, Wisconsin, this 25th day of September, 1992.

BY THE COURT:


Richard T. Becker
Circuit Judge, Br. III

Copies of the foregoing Decision were mailed to the following on the 28th day of September, 1992:

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