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The petitioner in this case was fired and then reinstated. In between approximately six months passed. After his reinstatement, he asked the board to resolve the conflict surrounding his right to certain benefits.

The board correctly argues that it is a creature of statute and must find its powers to act within those statutes. Racine Fire and Police Comm. v. Stanfield, 70 Wis.2d 395, 399, 234 N.W.2d 307 (1975). The board's October 12, 1977 decision is also correct in pointing out that neither sec. 16.05(1)(e), nor sec. 16.05(1)(f), stats., grants the necessary power. The former refers to "appeals of employees with permanent status in class, from decisions of appointing authorities when such decisions relate to demotions, suspensions or discharges. . .", and the latter refers to appeals from actions of the director. Here neither situation is present. Having concluded that neither of these two statutes would allow the exercise of jurisdiction the board dismissed the appeal.

The court, however, is of the opinion that there may be other bases for the exercise of jurisdiction which were not considered by the board and will remand the matter so that they may be considered by the full board.

Sec. 16.05, Stats., specifies the duties of the personnel board. Subparagraph 4 of that section provides as follows:

"(4) The board may make investigations and hold hearings on its own motion or at the request of interested persons and issue recommendations concerning all matters touching the enforcement and effect of this subchapter and rules prescribed thereunder. If the results of an investigation disclose that the director, appointing authority or any other person acted illegally or to circumvent the intent and spirit of the law the board may issue an enforceable order to remand the action to the director or appointing authority for appropriate action within the law. Any action brought against the director or appointing authority for failure to comply with the order of the board shall be brought and served within 60 days after the date of the board's findings."

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This subsection would appear to provide very broad powers to the board to hear matters of interest to it. It empowers the board to issue recommendations concerning "all matters touching the enforcement and effect of this subchapter" and provides them with the power to issue enforceable orders directed at an appointing authority. Although the exercise of these powers is made discretionary by the statute, it would clearly provide a basis for jurisdiction and since it appears not to have been considered by the board, the Court feels that a remand is appropriate.

In addition to sec. 16.05(4), stats., the Court's attention has also been brought to the existence of a collective bargaining agreement between the State of Wisconsin and the Wisconsin State Employees Union, of which the petitioner is a member. Article X, sections 121 and 122 of that agreement provide as follows:

ARTICLE X
Hearing Officer

121 The Personnel Board may at its discretion appoint an impartial hearing officer to hear appeals from actions taken by the Employer under Section 111.91(2)(b) 1 and 2 Wis. Stats.

"1. Original appointments and promotions specifically including recruitment, examinations, certification, appointments, and policies with respect to probationary periods.

2. The job evaluation system specifically including position classification, position qualification standards, establishment and abolition of classifications, assignment and reassignment of classification to salary ranges, and allocation and reallocation of positions to classifications, and the determination of an incumbent's status resulting from position reallocations."

122 The hearing officer shall make a decision accompanied by findings of fact and conclusions of law. The decision shall be reviewed

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by the personnel board on the record and either affirmed, modified or reversed, the personnel board's action shall be subject to review pursuant to Ch. 227 of the Wisconsin Statutes."

On August 24, 1976, the board issued a declaratory ruling, case no. 75-206, on behalf of Wisconsin State Employees Union which found that section 111.91(3), Stats., provided explicit statutory authority for hearings of the type agreed to in Article X, sections 121 and 122. Sec. 111.91(3), Stats., provides as follows:

"(3) The employer may bargain and reach agreement with a union representing a certified unit to provide for an impartial hearing officer to hear appeals on differences arising under actions taken by the employer under sub. (2)(b) 1 and principles vital to the public interest in efficient and economical governmental administration. Cost of fact-finding proceedings shall be divided equally between the parties. At the time the fact finder submits a statement of his costs to the parties, he shall submit a copy thereof to the commission at its Madison office."

Sec. 111.91(2)(b)(1), Stats., to which the above section refers, provides as follows:

"(2) Except as provided in sub. (3), the employer is prohibited from bargaining on:

. . .

(b) Policies, practices and procedures of the civil service merit system relating to:

1. Original appointments and promotions specifically including recruitment, examinations, certification, appointments, and policies with respect to probationary periods."

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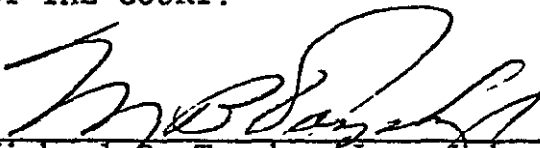
Through this statutory scheme the legislature has prohibited the parties from bargaining on certain issues affecting the civil service program, but has allowed the parties to set up a dispute settlement procedure regarding these same matters.

In this case it appears that this section of the bargaining agreement was not part of the record when the board issued its order. The decision makes no mention of it as a possible basis for jurisdiction. Since the court has previously decided that it is necessary to remand the matter for consideration of sec. 16.05(4), Stats., it would seem appropriate for the board to also consider the effect of the bargaining agreement on the board's jurisdiction over this matter. By bringing this matter to the attention of the board, the Court is expressing no indication of its belief that the particular issues involved here are or are not cognizable under either the statutory sections cited above, or the provisions of the contract. Both make action by the board discretionary. However, since neither appears to have been considered by the board and either one or both might have a substantial affect on the jurisdictional issue, the board is directed to take further evidence if necessary and to consider both Sec. 16.05(4), Stats., and Article X, sections 121 and 122 of the collective bargaining agreement, in deciding the jurisdictional question.

For the reasons set forth above, the decision of the board, dated October 12, 1977, is hereby reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Dated this 13 day of May, 1978.

BY THE COURT:


Michael B. Torphy, Jr., Judge
Circuit Court, Br. 2