

STATE OF WISCONSIN

BEFORE THE PERSONNEL BOARD

George Zanck, Art Schaafsma and
Jane Ann Godager,)
Appellants,)

vs.)

Wilbur J. Schmidt, Secretary)
Department of Health & Social Services)
and C. K. Wettengel, Director)
State Bureau of Personnel,)
Respondent)

#441

DECISION ON JURISDICTION

This matter is before this Board in the final step of the state-wide grievance procedure.

The substantial facts in this matter are not in dispute.

All three Appellants were employes of the Respondent Department of Health and Social Services. The status of the Appellants at the times in question was that each of them was on formal educational leave of absence. Under the training program for state employes, each of the Appellants received an education stipend authorized by s. 16.21(2)(b) Wis. Stats.

Subchapter VI, Chapter 40, Wis. Stats. provides for Social Security for public employes. Pursuant to the legislation the Wisconsin Retirement Fund has a contract with the Social Security Administration for the coverage of state employes. Among other things, this contract provides, as is authorized by the subchapter, for employer contributions and employes' contributions to be withheld.

It is entirely evident that the Respondent Department of Health and Social Services did not initially consider that the Appellants and others so situated on educational leave and with education stipend to be covered employes with the stipend subject to employer or employe contribution, for no withholding from the stipend was made.

At some time during the stipend program an employe under the program applied to the Social Security Administration for permanent disability payments. In the course of consideration of this application, the Administration determined that the stipend was wages and subject to contribution. The Department was assessed for both the employer and employe social security tax.

The department appealed this ruling to the Commissioner of Social Security, but he confirmed it, finding that the department was liable for the deduction and payment of the social security taxes from educational stipends.

As a result of this conclusion of the Commissioner, the Department of Health and Social Services computed the liability for employer and employe contributions and paid both shares. The department now seeks to recover the employe contribution from the stipend people.

The Appellants take what on the face appears to be a consistent position: If they are not considered, while receiving the stipend, to be in an employer-employe relationship and entitled to full employe benefits, that the stipend cannot be considered as wages subject to social security tax; or the reverse of that position: If the stipend be subject to social security tax, the Appellants, even though on educational leave of absence, should be entitled to full employment benefits.

This Board must conclude that, under the controlling statutes and rules, that these Appellants on educational leave of absence even though receiving a stipend, were not in such work status as to be entitled to full state employe benefits.

Had the decision that the stipends are subject to social security tax been made by the Department of Health and Social Services or by the Wisconsin Retirement Fund, this Board might under a liberal construction

of its authority emanating from the authorization of the stipend by s. 16.21 (2)(b) Stats. to review such decision. A strict interpretation of this Board's authority, however, would conclude that the matter is a Subchapter VI, Chapter 40 Stats. matter with which this Board cannot be concerned.

The decision subjecting the stipends to social security tax was not that of any Wisconsin State agency; it was made by the Commissioner of Social Security. He undoubtedly made his decision on the basis of said Subchapter VI, the contract between the Wisconsin Retirement Fund and the Social Security Administration, and the pertinent provisions of the Internal Revenue Code.

Should this Board agree with the Appellants, it still would have no power to overrule or mandate the Commissioner of Social Security or to exonerate the Appellants and/or the Department of Health and Social Services from a federal tax liability imposed by a federal agency.

If Appellants desire to litigate the validity of the social security tax imposed upon the stipends, they must press their case in some forum that has jurisdiction over the Commissioner of Social Security.

The Appellants' contention that the Department is precluded from collecting the employe contribution because it did not make deduction with each installment payment is a sterile argument. It is quite clear that any amounts due the state through overpayment or payroll error must be collected from the employe.

The Personnel Board declines to accept jurisdiction of these grievance.

Dated: December 7, 1971.

STATE PERSONNEL BOARD

BY

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