

STATE OF WISCONSIN

BEFORE THE STATE BOARD OF PERSONNEL

_____)
Robert M. Finley, et al
Appellant)
vs.)
Edward A. Wiegner, Secretary
Wis. Department of Revenue,)
Respondent.)
637_____)

ORDER

The board having given its findings of fact and conclusions of law now hereby orders as follows:

That the Wisconsin State Personnel Board does not have jurisdiction to hear this matter, and the grievance is hereby ordered rejected and dismissed for want of timely submission and lack of jurisdiction.

Dated at Madison, Wisconsin

this 28th day of July, 1972.

WISCONSIN STATE BOARD OF PERSONNEL

BY: William Rhone
Acting chairman

STATE OF WISCONSIN

BEFORE THE STATE BOARD OF PERSONNEL

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Robert M. Finley, etal.	Appellant)	SUMMARY FINDINGS OF FACT
vs.)	
Edward A. Wiegner, Secretary)	AND
Wis. Department of Revenue,	Respondent)	CONCLUSIONS OF LAW
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The Wisconsin State Personnel Board having received an appeal under the provisions of the state-wide grievance procedure, and having referred the matter to C. K. Wettengel, Director, State Bureau of Personnel, for his investigation and recommendation, and his recommendations having now been received, concurring and affirming the action taken by the employing agency,

And it appearing that no additional testimony herein is necessary and that findings and disposition can be made upon the file in this matter, the board now makes the following:

FINDINGS OF FACT

1. The Appellants named herein are all attorneys employed by the Wisconsin Department of Revenue, and filed a grievance alleging an error in the merit money award which resulted in the denial of the requested relief by the appointing officer at the 3rd step.
2. The matter was referred by the State Board of Personnel to the Director of Personnel for investigation and evaluation and

recommendations, on June 23, 1972; and the Director of the State Bureau of Personnel has now filed his notification of the affirmance of the action taken by the respondent, secretary, of the Wisconsin Department of Revenue.

3. The subject matter of the grievance is the allegation that in the application of the performance evaluation ranking by each of the appellants immediate supervising officer, for each of the years 1968, 1969, 1970, and 1971 that the initial percentage of merit step to which each greivant was entitled, the respondent utilized an improper figure as the step base for the computation of a merit money salary adjustment for each of the appellants.

4. The contention of the grievants is, that in the attorney's salary schedule (schedule 7), the step increase as indicated therein is a factored step and the employing department is obliged by law to use as a merit step base a mathematical figure from which the indicated merit factored step is derived.

5. The grievants admit that each of them were aware of their performance ranking in each year in question, and they were advised of the amount of the merit monies which they were awarded. They further allege that at that time they were not aware that the attorney's step increases as shown in schedule 7 was a factored step, although this is clearly indicated in each approved pay plan. Accordingly, retroactive pay is sought as the ultimate remedy requested.

6. The grievance procedure for the years 1968 and 1969 provided for an investigational type hearing by the State Personnel Board with advisory recommendations to the appointing officer. The current grievance procedures now in full force and effect presently require the timely processing of the grievance, with an appeal to the Personnel Board in only those instances where a Wisconsin statute or administrative code rule has been violated or misapplied. The grievance as filed, alleges an error in the determination of merit monies by the use of the factored base by the appointing officer. The grievance does not allege or show any statutory duty imposed upon the respondent which mandatorily requires him to apply and determine merit money in the manner which the grievants allege to be proper.

7. The grievance as filed has not been timely filed, as the appeal time commences at the time of the respondent's determination and notification of the merit award.

8. The allegations in the grievance fail to show any misapplication or improper interpretation of statutory law or Personnel Board rule as required as a pre-requisite on which board jurisdiction must be based.

9. There is no showing of any statutory right of the appellants to the requested remedy or mandatory obligation of the respondent to perform his duties in the manner requested.

The Board having issued the above findings of fact makes the following:

CONCLUSIONS OF LAW

1. That the grievance filed herein is not timely and the Board has no jurisdiction to hear the matter.

2. Neither the initial grievance procedure nor the present prescribed procedure have conferred jurisdiction on the board to hear the matter as the action alleged is a discretionary exercise of the respondents judgment and there is no violation or misapplication of statute or board rule.

3. This grievance can only be processed to the third step, with the final disposition to be made by the respondent's appointing officer.

4. That the Board has no jurisdiction to hear the matter and the application of the appellants is rejected on jurisdictional grounds.

Dated at Madison, Wisconsin

this 23rd day of July, 1972

WISCONSIN STATE BOARD OF PERSONNEL

BY:

William Ahrens

Acting Chairman