



from the director (with attachments); letter of September 24, 1976, from the board office to the parties; letter of October 15, 1976, from Richard V. Graylow to the board; letter of November 8, 1976, from Donald Murphy to the board; letter of November 11, 1976, from Richard V. Graylow to the board.

#### FINDINGS OF FACT

1. Pursuant to its Opinion and Order entered April 19, 1976, the board remanded appellant's complaint to the respondent for processing under the unilateral grievance procedure.
2. The grievance was denied at the third step and, also pursuant to the aforementioned Opinion and Order, was submitted to the director for investigation.
3. By letter dated September 23, 1976, with attachment, the director affirmed the agency decision.
4. By letter dated September 24, 1976, the board requested that the parties advise within 15 calendar days whether they wished to appeal the director's decision.
5. The earliest communication which might be construed as an appeal of the director's determination was a letter dated October 15, 1976, and received October 18, 1976.

#### CONCLUSIONS OF LAW

1. The director's decision dated September 23, 1976, did not determine that the agency action involved his authority and responsibility and did not order the affirmance of the agency's decision.

2. The 15 day appeal requirement set forth in the APM, non-contractual employe grievance procedures, (part I.D.J. 1), accordingly was not triggered.

3. The appellant was under no obligation to appeal and therefore could not be concluded to have failed to file a timely appeal.

#### OPINION

The provisions of the APM on non-contractual employe grievance procedures, (part I.D.J. 1), that provides a 15 day time limit to appeal a decision of the director only applies:

"If during the investigation the Director discerns that agency action in the grieved matter is an action that involves his authority and responsibility he shall ... issue an order affirming or overruling the agency decision." (emphasis supplied)

Once such an order is issued either party may appeal the director's action to the board.

In this case the director did not issue such an order. He did not determine that the agency action grieved "involves his authority and responsibility." Rather he reached the conclusion:

"... that the respondent agency properly exercised its authority granted to them by the legislature as specified in sections 36.09(1)(e) and 36:15(2), Wis. stats., in appointing specialists to positions identified as being in the unclassified service. Furthermore, I have concluded that the state bureau of personnel is not responsible for monitoring actual day-to-day decisions regarding which positions in the University of Wisconsin System are in or out of the classified service. Such authority is granted solely to the board of regents and is therefore not an appealable issue." (letter of September 23, 1976, from the director, emphasis supplied).

Therefore, it cannot be concluded that the appellant failed to file a timely appeal of the director's determination.

WSEU, Council 24, AFSCME, AFL-CIO  
Case No. 74-100  
Page Four

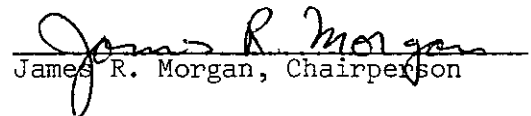
The board notes that the Personnel Board and the Board of Regents have now adopted pursuant to § 36.09(1)(i), stats., policies governing the designation of positions to be exempt from the classified service as academic staff. We of course cannot predict whether these policies might serve as a basis for resolution of some of the differences between the parties underlying this appeal, but this should be discussed at the prehearing conference.

ORDER

The motion to dismiss is denied.

Dated: April 11, 1978

STATE PERSONNEL BOARD

  
James R. Morgan, Chairperson