STATE OF WISCONSIN

\* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* WISCONSIN STATE EMPLOYES UNION, COUNCIL 24, AFSCME, AFL-CIO, \* \* Appellant,  $\dot{\sim}$ \* v. \* PRESIDENT, University of Wisconsin, \* \* Respondent. × \* Case No. 74-100 ÷. 

**OFFICIAL** 

INTERIM OPINION AND ORDER

Before: James R. Morgan, Calvin Hessert and Dana Warren, Board Members.

## NATURE OF THE CASE

This is an appeal of a grievance. In an Interim Opinion and Order entered April 19, 1976, the board denied a motion to dismiss for failure of subject matter jurisdiction, concluded that jurisdiction was present pursuant to § 16.05(7), stats., and remanded appellant's complaint through the unilateral grievance procedure. There followed such processing and a referral to the director pursuant to DOA Administrative Practices Manual, noncontractual employe grievance procedures, part I.D.J. The director affirmed the decision of the appointing authority. The respondent thereafter took the position that the appellant had failed to file a timely appeal of this decision to the Personnel Board. The following findings of fact are based on matter in the file that appears to be uncontested. The board takes official notice of the aforesaid APM as well as the following documents in this file: Opinion and Order entered April 19, 1976; letter of August 31, 1976, from Bernard Metzler; letter of September 8, 1976, to the director; letter of September 23, 1976, WSEU, Council 24, AFSCME, AFL-CIO Case No. 74-100 Page Two

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

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 <u>agency</u> action in the grieved matter is an action that involves his <u>authority and responsibility</u> 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 it 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.

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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: <u>April 11</u> , 1978

STATE PERSONNEL BOARD

James R. Morgan, Chairperson