

STATE OF WISCONSIN

STATE PERSONNEL BOARD

* * * * *
 WISCONSIN STATE EMPLOYEES UNION,
 #24, AFSCME, AFL-CIO,

 Appellant,

 v.

 JOHN WEAVER, President,
 University of Wisconsin,

 Respondent.

 Case No. 74-100
 * * * * *

OFFICIAL

OPINION AND ORDER

Before: JULIAN, Chairperson, SERPE, WILSON and DEWITT, Board Members.

OPINION

I. Facts

Appellant through its representative Bernard Metzler, an employee of Respondent, filed a grievance on or before August 5, 1974. The grievance alleged that Respondent created and filled two unclassified positions, film/photo specialist and media specialist, in violation of Article I, Article II Section 1, and Article III paragraph 6 of the Agreement between AFSCME Council 24 Wisconsin State Employees Union, AFL-CIO and State of Wisconsin (hereinafter called Agreement) and Wisconsin Statutes Section 111.84(a). The grievance was denied at the third step on August 26, 1974. Management stated that the contract applied only to classified employees and that the authority to determine whether a position would be unclassified rests solely with the Board of Regents. Further, management stated that the action to designate these positions as unclassified did not interfere with the operation or activities of the union.

On September 6, 1974 Appellant through its representative Ronald P. Orth filed an appeal with the Personnel Board. The appeal alleging a violation of Wisconsin Statutes Sections 16.08 and 111.84(1)(b) sought to invoke the Board's jurisdiction under Article X of the Agreement. The requested remedy was that the two positions in question plus all similar positions created in the future be designated as classified

A prehearing conference in this appeal was held on March 10, 1975.

Respondent moved to dismiss the appeal on the following grounds:

- 1.) That the Union by itself does not have standing to prosecute an appeal from the third-step denial of a grievance.

. . .

- 2.) That the Board does not have jurisdiction over this appeal because it deals with the filling of certain positions by unclassified employees and the labor agreement by its terms only relates to classified employees of the State of Wisconsin.

Appellant believes that the Board has jurisdiction under Sec. 16.05(4), Stats., insofar as the appeal letter alleges a violation of the civil service law; Appellant would also predicate jurisdiction on Sec. 16.05(7), Stats..

- 3.) That the Appellant's appeal letter, written by Mr. Ronald Orth on behalf of the Union, is so vague that, standing alone, it fails to comply with those minimal due process requirements set out in Beauchine v. Schmidt, Case No. 73-38 and to seasonably inform Respondent just what it is Appellant is contending in bringing this appeal. (Conference Report, dated March 11, 1975, page 1.)

The parties have filed briefs on this motion.

II. Conclusions

Standing

In Kaukl v. Earl, Case No. 74-127, February 23, 1976, the union appealed the alleged misuse of limited term employees. It sought as a remedy that the named employees plus all other employees working for the agency have their limited term employee status changed to permanent status. We held that the union could appeal to the Personnel Board on behalf of its members. However, the employees who filled the positions in question and who because of their limited term employee status were not union members were made necessary parties to the proceeding before the Board.

The instant appeal falls within the rule of Kaukl. Appellant on behalf of its members is protesting the Respondent's assignment of certain positions to the unclassified academic staff status. It is alleged that the assignment is in violation of the civil service law. The remedy sought is that the two positions in question plus all similar positions created in the future be designated as within the classified service.

Therefore, we conclude that Appellant has standing to bring this appeal before the Personnel Board. The employees who now fill the two positions in question are deemed to be necessary parties.

Jurisdiction

Section 16.05(7)

Appellant originally appealed to the Personnel Board under Article X of the Agreement. At the prehearing conference, however, Appellant invoked this Board's jurisdiction only under Sections 16.05(4) and 16.05(7), Wis. Stats..

In order for the Board to have jurisdiction of this appeal as the final step in a grievance procedure under Section 16.05(7), the action grieved cannot be a bargainable subject nor otherwise come under the Agreement. The grievance procedure for the Madison campus of the University of Wisconsin, which was supplied by Appellant states:

This procedure is available to all classified employees of the Madison campus except that employees in a certified bargaining unit may not use this procedure if the intent of the grievance is to change a condition of employment that is subject to collective bargaining. This procedure also may not be used in lieu of the grievance procedure provided for in a labor contract.

Article IV of the Agreement states:

Section 1: A grievance is defined as, and limited to a written complaint involving an alleged violation of a specific provision of this Agreement.

. . .

Section 6: The grievance procedure . . . shall be exclusive and shall replace any other grievance procedure for adjustment of any disputes arising from the application and interpretation of this Agreement.

The determination of whether a position will be in the classified service apparently does not fall within the bargainable subjects listed in Section 111.91, Wis. Stats.. It seems rather to fall within the rights of management as defined under Section 111.90, Wis. Stats., specifically subsection 1 which includes the right to:

Carry out the statutory mandate and goals assigned to the agency utilizing personnel, methods and means in the most appropriate and efficient manner possible.

The authority to appoint and to designate a position to the unclassified academic staff rests in management. (Sections 36.15(2) and 36.09(1)(i).) Therefore, we conclude that the action by Respondent to make the two positions in question academic staff is not a subject of collective bargaining nor otherwise a subject of the contract grievance procedure.

The action complained of, however, is grievable under the unilateral grievance procedure. The procedure defines a grievance as:

a personnel problem involving an employe's (or a group of employes) expressed feeling of unfair treatment or dissatisfaction with aspects of his/her working conditions within the agency which are outside his/her control. (Administrative Practices Manual, Part: Personnel, Section: Administration, Subject: Non-contractual Employee Grievance Procedures (October 1, 1974), p. 2 (hereinafter cited as Grievance Procedures).

Section 16.05(7), Wis. Stats., states that the "the Personnel Board may be designated as the final step in a state grievance procedure." The Board has been so designated both in the unilateral grievance procedure developed by the Bureau of Personnel and in the one developed by the University, a copy of which Appellant supplied when there is an allegation of a violation of the civil service law. (See Grievance Procedures, p. 5.)

In the instant case Appellant alleges that the Board of Regents has violated Section 16.08, Wis. Stats., by making the two positions in question unclassified. Therefore, we conclude that we may properly hear this grievance and will take jurisdiction over it.

However, the grievance as it now stands before the Board was processed by management under the contractual grievance procedure. Therefore, we remand this complaint to step one for processing through the unilateral grievance procedure. This will give management adequate opportunity to fully consider the merits. Should the grievance be denied at the third step by the Respondent, then we further remand it to the Director of the Bureau of Personnel for investigation in accordance with the unilateral grievance procedure.

Page 5

Wisconsin State Employees Union, #24
AFSCME, AFL-CIO v. Weaver - 74-100

Section 16.05(4)

The Board's power to investigate is very broad and couched in discretionary terms. Since we have already concluded that the subject matter of this appeal should properly be grieved under the unilateral grievance procedure, we will decline to exercise jurisdiction under Section 16.05(4) at this time.

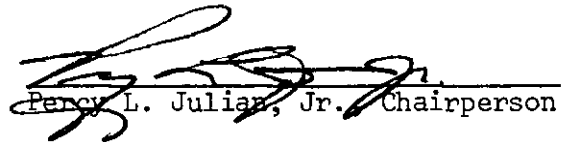
ORDER

IT IS HEREBY ORDERED that Respondent's motion to dismiss is denied.

IT IS FURTHER ORDERED that this grievance is remanded to the Respondent for action in accordance with this opinion.

Dated April 19, 1976.

STATE PERSONNEL BOARD


Percy L. Julian, Jr. Chairperson

Complete this report, following instructions below. Attach last copy (green) and submit rest of set to the labor representative of your employer.

State of Wisconsin

25

PERCIVAL STATE BOARD
EMPLOYEE CONTRACT GRIEVANCE REPORT

Grievance Step - circle one
1 2 3

No. for Agency use only

If this is a group grievance, use name and classification of spokesman
attach a sheet listing the names and classifications of other grievants.
TYPE OR PRINT

Name - Last, First, Middle Initial WSEU Local 1800		Classification Union	Bargaining Unit
Agency	Division	Employing Unit UWGB	Work Unit
Home Telephone 4652403		Headquarters Location	Shift or Hours of Work

This grievance alleges violation of Article III Section sub 6 of the labor agreement.

Describe the grievance - state all facts, including time, place of incident, names of persons involved, etc.

On Thursday, July 25, 1974, we received word that two new specialists were hired; 1 film/photo specialist and 1 media specialist. The responsibilities of these positions are covered under civil service classification. Therefore; we feel that this is an attempt to undermine the Union.

In managements answer to 2nd step, there is no mention of their commitment to the Union to have positions screened by a committee to find if positions should stay academic or go civil service.

Relief sought

Relocation of these positions to civil service status

Employee's Signature <i>[Signature]</i>	Employee Representative's Signature <i>[Signature]</i>	Date Submitted 8-5-74
--	---	--------------------------

Employer's Decision
During the third step meeting, Council 24 field representative amended the alleged violation to include Article I (Scope of the Agreement). The agreement covers "only classified employees" whereas the positions in question are "specialists" (unclassified). The right to determine which positions are classified and which are unclassified rests solely with the Board of Regents of the University of Wisconsin and its designated administrators.

The second alleged violation is Article II, Section 1, which defines the bargaining units. The listed classifications do not include unclassified specialists and specifically include only designated classified employees.

The third alleged violation is Article III, paragraph 6, which prohibits the use of management rights to undermine the Union. The Union insists that the undermining results because

Employer's Signature <i>[Signature]</i>	Title Director Personnel and Employee Relations	Date Received 8/7/74	Date Returned 8/26/74
--	--	-------------------------	--------------------------

INSTRUCTIONS

Individual employees have the right to present grievances in person or through representatives of their own choosing at any step of the grievance procedure.

In the event that the employee is not satisfied with the supervisor's written decision, or if the supervisor does not return an answer within the time limits set out in the collective bargaining agreement, to be considered further, the grievance must be appealed to the next higher step or appealed to arbitration within the time limits set forth in the agreement.

See your collective bargaining agreement for time limits for presenting and acting on grievances. Failure to observe these time limits will result in loss of appeal rights. These time limits may be extended only by mutual agreement.

management is carrying certain employees as unclassified specialists instead of using classified classifications, thus resulting in the loss of fair share dues.

Management at Green Bay has consistently used the unclassified specialist to staff professional positions in the Communications Media Department. There has been no diminution of the number of classifications or people in the blue collar or technical unit at Green Bay substantiating the charge of an attempt to undermine the Union.

The final charge was a violation of 111.84(a) Wisconsin Statutes resulting in the inability to form and operate a Union. While the contractual grievance procedure is inappropriate to resolve the matter, the Local at Green Bay is formed and operating.

Bargaining on classifications is a prohibited subject per Wisconsin Statutes 111.80. Furthermore, Central Administration could find no violation of the contractual agreement by administrators at Green Bay. The grievance is denied.

REC'D
AUG 31 1974
11 54

LEARD
WISCONSIN
DIVISION