STATE OF WISCONSIN STATE PERSONNEL BOARD

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MARVIN KAUKL,

Appellant,

v.

ANTHONY EARL, Secretary,
Department of Natural Resources,

Respondent.

Case No. 74-127

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OFFICIAL

INTERIM
OPINION AND ORDER

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

FINDINGS OF FACT

These findings are based on the record to date and are made solely for the purpose of deciding Respondent's motion to dismiss.

This is an appeal of a grievance. The grievance was filed on behalf of Local 1218 by its president, the Appellant, and consisted entirely of the following statement:

> We find violations of the Wisconsin Administrative Code, Rules of the Director (Personnel Board Rules), Chapter 10, and the Wisconsin Statutes 16.21.
>
> Three employes, Jim Ment, Wayne Francoys, and Carl Francoys have for several years and still continue to work at the Devils Lake State Park as limited term employes. Each year these employes have exceeded the 1044 hour maximum as stated in Chapter 10.

The Appellant sought the following relief:

> These employes and all other employes working for the D.N.R. as L.T.E.'s be regraded as permanent employes with all civil service rights and benefits.

The grievance was denied at each step and was then appealed to the Personnel Board. In response to the grievance the agency reviewed its use of L.T.E.'s and proceeded to terminate all regular L.T.E.'s whose term of employment had reached the maximum hours allowed. The agency also instituted a computerized review of L.T.E. utilization designed to ensure that such extended employment of L.T.E.'s did not recur.

At the prehearing conference the Respondent moved to dismiss this appeal on the following grounds:

1. Lack of standing on the part of the Appellant;
2. The remedy sought is illegal and not within the scope of the Board's jurisdiction;
3. The matter is moot inasmuch as the agency has corrected the original problems involved in the appeal.

The parties have filed briefs on this motion.

CONCLUSIONS OF LAW

STANDING

Determination of the standing question depends in large part on how Appellant's grievance is characterized. The Respondent focuses on the relief requested — classification of L.T.E.'s as permanent employes — and argues that there is no basis for the Appellant to represent the interests of these non-union members in this regard. The Appellant focuses on the thesis that the improper utilization of these L.T.E.'s adversely affects the job security and other interests of the members of Local 1218, and argues that the Appellant as president of the local has standing to represent the union members.

In essence, we believe that both parties are correct as far as they go. If this case involved solely a request that certain non-union member L.T.E.'s be afforded permanent status, the Appellant would not have any standing to represent their interests. On the other hand, if this case involved solely a protest by permanent employes and union members against the agency's use of L.T.E.'s the Appellant as president of the local would have standing to represent their interests.

Section Pers. 26.01, Wisconsin Administrative Code, cited by Respondent, does not foreclose this result. This provides that ". . . an employe affected by an action resulting from a personnel decision of the appointing authority or the director shall have the right of appeal." This does not require that the employe pursue the appeal by himself. In matters of this nature, a number of courts have recognized the standing of labor associations to pursue litigation on behalf of their collective membership. See Lodge 1858, American Federation of Government Employes v. Paine, 436 F. 2d 882, 893-894 (D.C. Cir. 1970); Council 34, American Federation of State, County & Municipal Employes v. Ogilvie, 465 F. 2d 221, 225 (7th Cir. 1972).

Based on Appellant's brief it is not clear whether he still seeks the relief requested in the original grievance. We conclude that the non-union member L.T.E.'s involved here are necessary or indispensable parties with regard to this aspect of the appeal. Appellant is generally correct in stating, with regard to the second ground for the motion, that the relief granted will depend on the facts proven regardless of the relief requested initially. However, inasmuch as the determination of who are necessary parties depends in part on the nature of the relief sought, the Appellant must advise the parties and the Board before a hearing what relief he still seeks.

RELIEF

Respondent argues that the relief identified in the grievance is outside the jurisdiction of the Board to grant and that therefore the appeal should be dismissed. He argues that it is required by statute that permanent positions be filled by competition and certification, and that the Board could not enter an order which would require permanent appointments for the L.T.E.'s without going through this process. We agree with the Appellant that even if this were correct that it would not be cause for dismissal, as we could grant such relief as might be appropriate based on the facts developed at the hearing. If it were clear that the stated relief were the only relief that Appellant deemed acceptable, then it would make sense to determine the question before the hearing. However, it seems relatively clear from Appellant's brief that he does not limit his request for relief to that stated in the grievance, and in any event he will be required to state with particularity the relief sought in advance of the hearing.

MOOTNESS

Even though Respondent maintains that he has corrected all the abuses alleged in the grievance, we conclude that the Supreme Court mandate in Watkins v. D.I.L.H.R., 69 Wis. 2d 782, 794 (1975), prevents dismissal on mootness grounds. The court rejected an argument that the case was mooted by the fact that the Respondent had been given the position she had sought by the agency, citing WERC v. Allis-Chalmers Workers Union, 252 Wis. 436, 443 (1948):

> . . . To dismiss enforcement proceedings . . . on the grounds that the cessation of the activities which gave rise to the

> order make it moot would invite circumvention of the established policy of the state. Rather than comply with the entirety of an order of the board, a union or an employer would know that he could wait until enforcement proceedings were begun, then desist from the unfair labor practice in question and move to dismiss the proceedings as moot, thereby evading the authority of the board.

Certainly there is present here the potential for avoiding possible future abuse of the L.T.E. classification through the entry of an appropriate order. Thus on the basis of the Watkins case we conclude that this case cannot be dismissed on mootness grounds.

ORDER

IT IS HEREBY ORDERED that the Respondent's motion to dismiss is denied. It is further ordered that the Appellant serve and file within ten working days of the date of entry of this order a statement setting forth with particularity the relief sought in this proceeding.

Dated February 23, 1976. STATE PERSONNEL BOARD

Percy L. Julian, Jr., Chairperson