
 DANIEL J. PRYZBYLA,
 Appellant,
 v
 JOHN C. WEAVER, President
 University of Wisconsin, and
 C. K. WETTENGEL, Director,
 State Bureau of Personnel,
 Respondents.
 Case No. 74-15

OFFICIAL

OPINION AND ORDER
ON JURISDICTION

Before: JULIAN, STEININGER and WILSON

OPINION

I. Facts

Appellant filed his appeal with this Board in February, 1974. At the prehearing conference held for this appeal on April 23, 1974, the issue of the Personnel Board's jurisdiction was raised. Respondents filed a brief on this issue, urging that this Board has no jurisdiction. The following Opinion and Order comprise our decision to date on this matter.

Appellant was a permanent employee classified as a Laborer (SR 3-04) at the Physical Plant Department of the University of Wisconsin-Milwaukee. He is a member of the bargaining unit, Wisconsin State Employees Union, and is subject to the agreement between the Association of Federal, State, County, and Municipal Employees Council 24 and the State of Wisconsin and its Agencies, effective July 1, 1973.

Appellant contends that a position of Motor Vehicle Operator - 1 (SR 3-05) was improperly filled. He alleges that the posting of the position occurred on Friday afternoon, December 28, 1973, and that the notice was removed and the position filled by Wednesday morning, January 2, 1974. There is nothing in the record to show on what date Appellant learned of these facts.

Appellant filed the first step of the grievance on about January 22, 1974. This first step as well as steps two and three were denied as untimely. At the third step the notice of the denial, dated February 21, 1974 and received by Appellant February 26, 1974 stated:

The grievance was filed at the first step on January 22, 1974. Article IV, Sec 1 of the Agreement, states in part: 'all grievances must be presented promptly and no later than 14 calendar days from the date the grievant first became aware of, or should have become aware of with the exercise of reasonable diligence, the cause of such grievance.

During the course of the third step hearing, neither the grievant nor his representative could present any mitigating circumstances which may have prevented this grievance from being filed on a timely basis. The grievance is therefore returned as untimely with no action taken.

Appellant appealed this denial in a letter dated February 28, 1974 and received by this Board's office on March 4, 1974.

Under Article VII of the Agreement between AFSCME Council 24 Wisconsin State Employees Union, AFL-CIO and the State of Wisconsin (hereinafter called Agreement), Respondent is first required to try to fill a vacancy by transfer. The basic procedure is outlined in the Article and involves a registration by those who are interested and eligible or a posting which was involved in the instant case. If either procedure fails, the vacancy is to be then filled in accordance with the Wisconsin Statutes, presumably Chapter 16, Subchapter II, Civil Service.

If the posting procedures under Article VII are not followed, a grievance may be filed under Article IV of the Agreement. There are four steps to the grievance procedure, the final one being arbitration. The Personnel Board is not involved in this procedure.

II. Conclusions

A Hearing On The Matter of Jurisdiction Should Be Held

The appeal is being brought under Article X of the Agreement which states:

Article X

Hearing Officer

Section 1 Hearing Officer.

The Personnel Board may at its discretion appoint an impartial hearing officer to hear appeals from actions taken by the Employer under Section 111.91 (2) (b) 1 and 2 Wis. Stats.

- '1. Original appointments and promotions specifically including recruitment, examinations, certification, appointments, and policies with respect to probationary periods.
2. The job evaluation system specifically including position classification, position qualification standards, establishment and abolition of classifications, assignment and reassignment of classification to salary ranges, and allocation and reallocation of positions to classifications, and the determination of an incumbent's status resulting from position reallocations.'

The hearing officer shall make a decision accompanied by findings of fact and conclusions of law. The decision shall be reviewed by the personnel board on the record and either affirmed, modified or reversed, the personnel board's action shall be subject to review pursuant to Ch. 227 of the Wisconsin Statutes.

Appellant states in his letter of appeal that the first posting for the Motor Vehicle Operator - 1 position occurred on December 28, 1975. This posting then was to give notice of the vacancy and to give an opportunity for those interested in the position to take the appropriate steps. Appellant appears not to have been eligible for the position on a transfer basis. His classification at the time was Laborer (SR 3-04). The vacancy was for a Motor Vehicle Operator - 1 (SR 3-05) position. He appears then to be eligible only on promotion.

Therefore, it appears that we have no jurisdiction over this matter based on a violation of Article VII of the Agreement. However, if the position were filled by promotion and not by transfer, then we would apparently have jurisdiction under Article X of the Agreement and Section 111.91 (3), Wis. Stats.. These provisions give the Personnel Board jurisdiction to hear claims arising from alleged violations of the procedures for the filling of vacancies by promotion. The fact that Appellant was not precise in claiming the violation was under Article VII is not fatal to his claim. It is sufficient that he apprised this Board of the nature of the alleged violation of Subch. II, Chapter 16 and rules promulgated thereunder.

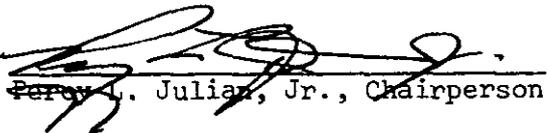
Therefore, a hearing is necessary to determine how the position was filled. If it were filled by promotion, then it is likely that we have jurisdiction to hear the case on the merits, that is, to determine whether there was a violation of Subch. II, Chapter 16 in the filling of this position by promotion.

ORDER

IT IS HEREBY ORDERED that the above entitled matter be set for hearing in accordance with this decision.

Dated July 30, _____, 1975.

STATE PERSONNEL BOARD


Percy L. Julian, Jr., Chairperson