
 HARVEY H. HOEFT,
 Appellant,
 v.
 MANUEL CARBALLO, Secretary,
 Department of Health & Social
 Services and VERNE KNOLL, Deputy
 Director, State Bureau of
 Personnel,
 Respondents.
 Case No. 74-37

OFFICIAL

INTERIM
OPINION AND ORDER

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

NATURE OF THE CASE

This is an appeal of a grievance pursuant to S. 16.05(7), Wis. stats. Preliminary issues concerning the timeliness of the appeal and the capacity of the Appellant have been submitted for decision prior to a hearing on the merits.

FINDINGS OF FACT

These findings are based on a stipulation by the Respondent to information contained in an offer of proof submitted by the Appellant and various documentary material. This offer consisted of a series of written questions to and answers by the Appellant. The stipulation by the Respondents was limited to the determination of the preliminary issues of timeliness and standing. These findings are limited to this interim decision on these issues.

The Appellant is and at all relevant times has been the President, Prison Local 18, Wisconsin State Employees Union. The grievance in this matter concerns a change in classification of the union members at Camp Flambeau from Officer 3 to Youth Counselor 3. The grievance was filed initially at the camp by one Bernard A. Almstedt, a camp employe and union steward. The grievance was denied at the step 3 level by the D.H.S.S. secretary on May 10, 1974, on the grounds that:

The subject that is being grieved is non-bargainable because it deals with position classification. Camp Flambeau is classified as a juvenile institution. Therefore, it is proper that it be staffed by Youth Counselors instead of officers.

The appeal to this Board, which was dated May 10, 1974, and received May 13, 1974, was filed by Appellant Hoeft, who stated in part in that appeal:

Due to the fact that we have not received an answer from the Department of Health & Social Services, I am appealing to the Bureau for a Hearing before the Personnel Board. The appeal is based on reclassification of officers at Camp Flambeau from Correctional Officer to Youth Counselor.

The reallocation in question here was promulgated by a notice dated May 24, 1974, effective May 26, 1974. The superintendent of Camp Flambeau was made aware that the reallocation was forthcoming in February, 1974, and the affected camp employes also became aware of the change prior to filing the initial grievance.

CONCLUSIONS OF LAW

TIMELINESS

The Respondents' timeliness argument runs to the prematurity of the appeal inasmuch as the appeal was filed prior to the date of official notice and the effective date of the reallocation complained of. While we do not encourage premature appeals, we conclude that it is not necessary to dismiss this appeal at this time. See Everton v. Carballo & Knoll, Wis. Pers. Bd. 75-81, April 19, 1976:

Even if the Appellant's appeal were characterized as premature, this is not jurisdictional inasmuch as any appeal provisions involved are not provided by statute. The Respondents cite the fifteen day limitation set forth in S. 16.05(2), but that only applies to appeals pursuant to Ss. 16.05(1)(e) or (f), neither of which is present here. Inasmuch as the third step was decided while the appeal was pending, we conclude that this has cured whatever defect may have been present at the time the appeal was filed. In the absence of a statutory requirement, we are not prepared to hold that appellant was required to have filed another appeal following the step 3 decision when she had already filed an appeal after the employer initially had failed to decide the third step of the grievance.

STANDING

The Respondents question the standing of Appellant Hoeft to represent the interests of the various union members affected by the reallocation.

In Kaukl v. Earl, Wis. Pers. Bd. No. 74-127, February 23, 1976, we held that a local president had standing to pursue an appeal on behalf of the collective interests of the union membership. In the present case, the interests of the union members are more properly characterized as individual, not collective. However, in Kaukl we cited a United States Seventh Circuit Court of Appeals case on standing that does provide authority for the Appellant's position. In Council No. 34, AFSCME v. Ogilire, 465 F. 2d 221 (7th Cir. 1972), the plaintiff union sought to:

. . . enjoin the defendants from enforcing the Ethics Code of the Governor of Illinois (Code) and the Rules of the Director of Personnel (Rules) promulgated under the Code, which required various of the plaintiff Union members to file financial disclosure statements.
465 F. 2d at 222.

The court held that the plaintiff labor organization had both the capacity¹ and the standing to sue with regard to an issue that involved the individual union members. See also Oklahoma St. AFL-CIO v. State Bd. for Prop. & C. Rates, 463 F. 2d 693, 694 (Okla. 1970).

Furthermore, this Board as an administrative agency is not bound by the rules of standing that prevail in judicial proceedings. The Respondents have cited the real party in interest statute, S. 260.13, Wis. stats. However, that statute is limited by its terms to "every action," and an "action" is defined as a "court proceeding" by S. 260.03. It has been suggested that access to administrative proceedings rests on a different basis than does standing to sue in judicial proceedings, see National Motor Freight Traffic Association v. United States, 205 F. Supp. 592, 593 (D.C. 1962); affirmed 371 U.S. 223, 83 S. Ct. 311 (1962); rehearing denied and affirmance explained, 372 U.S. 246, 83 S. Ct. 688 (1963).

In the instant case, jurisdiction rests on S. 16.05(7), Wis. stats.: "The board may be designated as the final step in a state

¹While the Respondents did not explicitly raise the question of the Appellant's capacity, we conclude for reasons developed below that he has the capacity as union president to pursue this matter.

grievance procedure." Section Pers. 25.01, W.A.C., provides in part: ". . . each department shall as required by the director, establish a written grievance procedure. Such procedure shall meet standards established by the director." The standard grievance procedure, Administrative Practices Manual, Non-contractual Employee Grievance Procedures, I. D. I. K, provides in part:

Each employe shall have the right to assistance by a representative of his own choosing in processing his grievance at any level in the procedure
(Emphasis supplied).

The D.H.S.S. Departmental Grievance procedure, DBM-Pers.-103 (1/1/72), provides in part as follows:

Each employe shall have the right to assistance by a representative of his own choosing in processing his grievance at any written step in the procedure.
(Emphasis supplied).

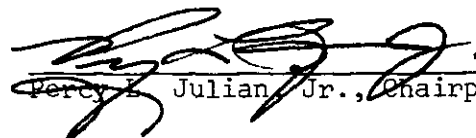
While we believe that Hoeft would have standing and capacity to proceed in the manner he does in this proceeding, in any event, we further conclude that as union president he acted as a "representative" of the affected employes and union members pursuant to the grievance procedures in filing this appeal and as such has capacity and standing in this administrative proceeding.

ORDER

It is ordered that this matter be set for hearing in due course.

Dated May 24, 1976.

STATE PERSONNEL BOARD


Percy L. Julian, Jr., Chairperson