

\* \* \* \* \*  
 \*  
 JAMES TAYLOR, \*  
 \*  
 Appellant, \*  
 \*  
 v. \*  
 \*  
 ANTHONY EARL, Secretary, \*  
 Department of Natural Resources, and \*  
 VERNE KNOLL, Deputy Director, \*  
 State Bureau of Personnel, \*  
 \*  
 Respondents. \*  
 \*  
 Case No. 74-97 \*  
 \*  
 \* \* \* \* \*

INTERIM  
 OPINION AND ORDER  
 ON MOTION  
 TO JOIN PARTY RESPONDENT

**OFFICIAL**

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

Respondent Earl has moved to join the Director of the Bureau of Personnel as a party Respondent. The Appellant objects. The Director has taken a neutral position.

This is an appeal of a grievance. It was referred to the Director for investigation and report pursuant to the statewide unilateral grievance procedure. The Director did so, concluding that the Appellant did not have a vested interest in the position of Director, Bureau of Information and Education, and that the agency had utilized poor personnel procedures in various aspects of their treatment of the Appellant.

Standing alone, the fact that the Director has reviewed this matter pursuant to the statewide unilateral grievance procedure does not provide a basis for adding the Director as a party. The procedure does not provide for this and we are not aware of any common law principle that would compel this result.

However, Respondent Earl in his letter requesting the Director's joinder states as follows:

. . . The Director has become involved in the case by his refusal on several occasions to certify the position into which Mr. Taylor wishes to be placed. It is imperative that the Director have an opportunity to defend his actions when the case comes before the Board.  
 Mr. Schwarz's letter of October 27, 1975.

This is presumptively a reference, at least in part, to so much of the Director's report that concluded that Appellant did not have a vested interest in the position in question and that it would have to be filed through regular civil service procedures.

At the prehearing conference in this matter, one of the substantive issues identified in this case was:

2. Is the Appellant entitled to the position of Bureau Director based on his employment record with the Bureau, including his tenure and duties in an acting capacity.

Appointments to positions in the classified service ordinarily must be made from a list certified by the Director, see S. 16.20(2), Wis. Stats. See also S. 16.11(1). The Appellant's position that he has a vested right to a direct appointment to the position in question necessarily involves the Director since by statute the agency can appoint only from a list certified by the Director. If the Appellant were to prevail on this issue, an order running solely to Respondent Earl might not be effective. Further, the Director is charged with the effective administration of civil service law, Subchapter II, Chapter 16. See S. 16.03(1), Wis. Stats. It is more appropriate that the Director defend his position that an appointment to the position in question must conform to the provisions of Subchapter II than Respondent Earl.

Whether or not the Director is a necessary or an indispensable party, we conclude he is a proper party and should be joined as a party respondent on this motion. See 59 AM JUR 2d Parties S. 11, p. 355:

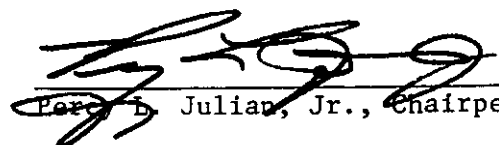
All those having an interest in the subject matter of the litigation which may be conveniently settled therein are proper parties. Proper parties include all who must be bound by the decree to make the decree finally effective and so to avoid recurrence of litigation on the same subject. A proper party is a person who should be joined if litigation is to be kept to a minimum and the rights of all persons concerned can be determined in one action . . . .

ORDER

IT IS HEREBY ORDERED that the Director is added as a Respondent to this proceeding.

Dated December 22, 1975.

STATE PERSONNEL BOARD

  
Percival Julian, Jr., Chairperson