STATE OF WISCONSIN STATE PERSONNEL BOARD

EUGENE R. DUMAS,

Appellant,

v.

MANUEL CARBALLO, Secretary,
Department of Health & Social Services,

Respondent.

Case No. 75-111

OPINION AND ORDER

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

NATURE OF THE CASE

This is an appeal of management's denial of a request to allow Appellant and another employe to split the latter's position into two half-time positions so that the two employes could continue state employment and simultaneously pursue their educations. The Respondent has objected to the subject matter jurisdiction of the Board.

FINDINGS OF FACT

These findings are based on undisputed matter that appears in the record to date. The Appellant, then an employe at the Central Wisconsin Colony and Training School, Division of Mental Hygiene, Department of Health and Social Services, submitted on or about July 3, 1975, a joint request with a co-employe to split the latter's position into two half-time positions to enable them to continue their educations. At this time the relevant collective bargaining agreement in force at Central Colony was between the State and AFSCME, Council 24, WSEU, AFL-CIO.

CONCLUSIONS OF LAW

The Appellant posits Board jurisdiction on the provisions of S. 111.91(2) and (3), Wis. stats., and Article X of the collective bargaining agreement. The statute provides, as pertinent:

> (2) Except as provided in sub (3), the employer is prohibited from bargaining on:
>
> * * *

(b) Policies, practices and procedures of the civil service merit system relating to:

* * *

2. The job evaluation system specifically including position classification, position qualification standards, establishment and abolition of classifications to salary ranges, and allocation and reallocation of positions to classifications, and the determination of an incumbent's status resulting from position reallocations.

* * *

(3) The employer may bargain and reach agreement with a union representing a certified unit to provide for an impartial hearing officer to hear appeals on differences arising under actions taken by the employer under sub. (2) (b) 1 and 2.

Article X, paragraph 121, of the contract provides:

> 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.

In an attempt to bring this case within the coverage of these provisions, the Appellant argues that management's decision involved "allocation and reallocation of 50% positions within the range of positions performed by aides." However, this decision is clearly neither allocation nor reallocation. See Wisconsin Administrative Code S. Pers. 3.02:

(1) Allocation. The initial assignment of a position to the appropriate class by the director as provided in section 16.07(2), Wis. stats.

(2) Reallocation. The assignment of a position to a different class by the director as provided in section 16.07(2), Wis. stats. ... .

We conclude that this matter is not appealable pursuant to S. 111.91(3), Wis. stats., as involving allocation or reallocation nor as any of the other categories listed in S. 111.91(2).

The Appellant further argues that the Board has assumed jurisdiction of this case by its actions in processing the appeal to date. He cites the letter acknowledging the appeal and the letter setting this matter for prehearing conference.

We do not find this argument persuasive. In the first place, subject matter jurisdiction can be raised at any time regardless of what steps the Board may have taken to process the case. Second, the Board's actions acknowledging the appeal and setting the matter for prehearing conference do not constitute an acknowledgement of jurisdiction. These are essentially ministerial acts.

We conclude that we lack subject matter jurisdiction of this appeal and that it must be dismissed. Our dismissal of this appeal should not be construed as a reflection on the concept of job sharing, inasmuch as this holding is jurisdictional and does not reach the substantive merits of the appeal.

ORDER

IT IS HEREBY ORDERED that this appeal is dismissed.

Dated March 31, 1976. STATE PERSONNEL BOARD

Percy L. Julian, Jr., Chairperson