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 *
 MARY GRAHAM, *
 *
 Appellant, *
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 v. *
 *
 JOHN C. WEAVER, President, *
 University of Wisconsin, *
 *
 Respondent. *
 *
 Case No. 75-124 *
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 * * * * *

OFFICIAL

INTERIM
OPINION AND ORDER

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

NATURE OF THE CASE

This is an appeal of a denial of two grievances pursued by a University of Wisconsin-Madison employe through the University of Wisconsin noncontractual grievance procedure. The Respondent opposes the subject matter jurisdiction of the Board.

FINDINGS OF FACT

These findings are based on stipulations between the parties entered into at the prehearing conference, as well as on uncontradicted matter apparent on the face of various documents filed by the parties.

The Appellant is a permanent employe in the classified service employed at the University of Wisconsin-Madison. She is a member of Local 171 but is not covered by a collective bargaining agreement. On September 19, 1975, she submitted two grievances. Copies of these grievances, marked Appellant's Exhibits 3 and 4 are attached hereto as part of an appendix. Also attached is a copy of Appellant's Exhibit 5 which is her appeal letter to the Personnel Board. These grievances were denied by the Respondent.

CONCLUSIONS OF LAW

If we have subject matter jurisdiction of this appeal it is pursuant to S. 16.05(7), Wis. stats.: "The board may be designated as the final step in a state grievance procedure." Respondent argues that the grievance procedure requires that there be an allegation that the agency has violated civil service rules or law or a delegated

function of the Director of the Bureau of Personnel, and the Appellant has not made such an allegation. However, the University of Wisconsin grievance procedure contains the following language:

If the employe does not agree with the answer rendered at the third level of review, and if the grievance involves the Civil Service Law or Rules or a function which the Director of the Bureau of Personnel has affirmatively delegated his authority to the University
(Emphasis supplied.)¹

We conclude that the underscored language does not require an allegation that the grievance involves the various categories mentioned, but only that the grievance involves subject matter which falls within those categories.

The first grievance (Appellant's #3) alleged in essence that the employer denied representation to the Appellant at a meeting concerning disciplinary action. The second grievance (Appellant's #4) alleged that an "arbitrarily capricious" letter was placed in her file, and that the letter was unsupported by evidence.

Section Pers. 26.02(8) Wisconsin Administrative Code provides as follows:

Personnel actions which are appealable include:

* * *

(8) Actions alleged to be illegal or an abuse of discretion.

Pursuant to S. Pers. 26.03(1), Wisconsin Administrative Code, decisions alleged to be illegal or an abuse of discretion which are not subject to "consideration under the grievance procedure ..., collective bargaining, or hearing by the board," are appealable to the Director of the Bureau of Personnel. Following a decision on such an appeal by the director pursuant to S. 16.03(4), Wis. stats., appeal may be made to the Personnel Board. See S. Pers. 26.03(2)(b), Wisconsin Administrative Code; S. 16.05(1)(f), Wis. stats.

We conclude that the terminology of the grievance procedure which provides for appeal to the Personnel Board of grievances which involve the "Civil Service Law or Rules" applies to S. Pers. 26.02(8) "Actions alleged to be illegal or an abuse of discretion." Section Pers. 26.03(1) providing that the Director "shall hear appeals on decisions alleged

¹While this procedure does not have the force of law, we attempt to give it an interpretation that will make it consistent with the statutes and administrative code.

to be illegal or an abuse of discretion and such decisions are not subjects for consideration under the grievance procedure . . .," (Emphasis supplied.) clearly indicates that matters that are alleged to be illegal or an abuse of discretion can be designated for review by the grievance procedure. A conclusion that grievances involving actions alleged to be illegal or an abuse of discretion were not appealable would lead to a very anomalous result. Despite the language of S. Pers. 26.02(8) that these actions are appealable and S. Pers. 26.03 that "appeals are of 2 types, those heard by the director and those heard by the board," employees would be unable to appeal actions alleged to be "illegal or an abuse of discretion," since in the first instance they would be covered by the grievance procedure but in the second instance they would be cut off by the grievance procedure from appeal to the Personnel Board.

Therefore, the grievance contained in Appellant's Exhibit 4 is appealable pursuant to S. Pers. 26.02(8) since it alleges an abuse of discretion. The grievance contained in Appellant's Exhibit 3 alleges that the employer failed to allow her representation, and this claim is founded, at least in part, on the provisions of the grievance procedure itself. The grievance procedure is enacted pursuant to the provisions of S. Pers. 25.01, Wisconsin Administrative Code, and violations of the procedure may be construed as violations of civil service rules for the purpose of appeal, even though such provisions independently do not have the force of law.

Another issue has been raised in this case by Respondent's counsel's request that we not consider Appellant's brief because it was submitted approximately two weeks later than the date the parties agreed to in the stipulated briefing schedule established at the prehearing conference.

Counsel for Appellant has argued that there could be no prejudice from such a delay, that the briefing schedule is discretionary rather than mandatory, and that the Board in the past has always considered late briefs.

We are convinced that as an administrative agency exercising quasi-judicial functions the Personnel Board has inherent power to regulate practice before it and may refuse to consider briefs that are untimely filed.

We have taken for the most part a relaxed position in the past with regard to timely filing of briefs. To a certain extent this attitude has been due to the fact that a large percentage of appellants appear without counsel and cannot fairly be held to the same standards as attorneys. However, it is difficult and somewhat inequitable to attempt to maintain a dual standard for attorneys and non-attorneys, so the result has been to apply a relaxed standard generally.

Where all parties to a proceeding are represented by counsel we would hope that in the exercise of professional courtesy counsel would adhere to briefing schedules established by agreement or by Board staff, or request, in a timely fashion, extensions of deadlines, regardless of the fact that such deadlines have not been strictly enforced. We also recognize that where deadlines are not rigidly enforced there is a tendency to develop bad habits.

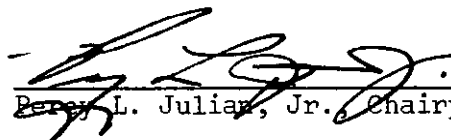
In light of these considerations, we conclude in the exercise of our discretion that it would be inappropriate to exclude Appellant's brief. However, we will by this decision serve notice that in the future delinquent filings may be subject to rejection.

ORDER

IT IS HEREBY ORDERED that Respondent's objections to subject matter jurisdiction are over-ruled and this file be forwarded to the Director of the Bureau of Personnel for his investigation pursuant to the Grievance procedure.

Dated March 11, 1976.

STATE PERSONNEL BOARD


Percy L. Julian, Jr. Chairperson

Complete this report, following instructions below. Detach last copy (gr 1) and submit rest of set to the proper representative of your employer.

GRIEVANCE MUST BE FILED ON THIS FORM

17-2

NON-COVERTURE
EMPLOYEE GRIEVANCE REPORT

Grievance Step - circle one
1 2 3

If this is a group grievance, use name and classification of spokesman and attach a sheet listing the names and classifications of other grievants.
TYPE OR PRINT

Name - Last, First, Middle Initial: **GRAHAM, MARY**
 Classification: **CLERK II**
 Agency: **State of Wisconsin, Division of University of Wisconsin-Madison**
 Employing Unit: **Center for Health Sciences**
 Work Unit: **University Student Health Service**
 Headquarters Location: **Health**
 Shift or Hours of Work: **7:45 am - 4:30 pm**

This grievance alleges violation of **the basic rights of the employee given down by the Supreme Court in cases of *Earl Warren vs. Univ. of Wisconsin-Madison* and *Earl Warren vs. Univ. of Wisconsin-Madison*.**

Describe the grievance - state all facts, including time, place of incident, names of persons involved, etc. List **WISCONSIN-MADISON** and also the rights set forth in a memo from **Anthony EARL**, Department of Administration.

It is alleged that on August 11, 1975, Ms. Conner's refusal to refer her to a representative after receiving a written request for representation at a meeting being held that day. The meeting was being held because of Ms. Graham's alleged caustic and abusive behavior toward patients and co-workers. Mr. Conner had stated that this meeting could be held in a letter of August 1, 1975, placed into the working files of Ms. Graham. Mr. Conner brought that same disciplinary actions would or could occur at this meeting.

Relief sought: **That all actions and statements at that meeting be declared invalid and can not be used in any case concerning the employee. This should be stated in a written letter to the employee.**

Employer's Decision: **None**

Employee's Signature: **Mary Graham**
 Date Submitted: **Sept 19, 1975**

The main issue in this grievance is whether or not grievant is entitled to union representation. Grievant is classified as a Clerk 2 and that classification is assigned to the Clerical and Related Bargaining Unit. At present, there is no collective bargaining agent representing the Clerical and Related unit. Consequently employees assigned to a Clerk 2 classification are not covered by the State Employment Labor Relations Act. Since no collective bargaining agent has been elected to represent the employees in the Clerk 2 classification, the employer is not bound to permit union representation at discussions with those employees. Grievance denied.

APPELLANTS INSTRUCTIONS

Employer's Signature: **Robert A. Jansen**
 Title: **Personnel Manager**
 Date Received: **7/22/75**
 Date Returned: **10/6/75**

Individual employees have the right to present grievances in person or through representatives of their own choosing at any step of the grievance procedure.

In the event that the employee is not satisfied with the supervisor's written decision, or if the supervisor does not return an answer within the time limits set out in the collective bargaining agreement, to be considered further, the grievance must be appealed to the next higher step or appealed to arbitration within the time limits set forth in the agreement.

See your collective bargaining agreement for time limits for presenting and acting on grievances. Failure to observe these time limits will result in loss of appeal rights. These time limits may be extended only by mutual agreement.

EXHIBIT # 3

Complete this report, following instructions below. Detach last copy (green) and submit rest of set to the proper representative of your employer.

State of Wisconsin

AD-25

NON-CONTRACTUAL

EMPLOYEE ~~CONTRACT~~ GRIEVANCE REPORT

Grievance Step - circle one		
1	2	3

OCT 7 1975

No. - for Agency use only

If this is a group grievance, use name and classification of spokesman and attach a sheet listing the names and classifications of other grievants. TYPE OR PRINT

Name - Last, First, Middle Initial GRAHAM, MARY	Classification Clerk II	Bargaining Unit
Agency STATE OF WISC.	Employing Unit UNIVERSITY OF WISCONSIN-MADISON CENTER for Health SCIENCES	Work Unit UNIVERSITY HEALTH STUDENT SERVICE
Work Unit Telephone	Headquarters Location	Shift or Hours of Work 7:45 AM - 4:30 PM

This grievance alleges violation of the basic rights of the employee

Describe the grievance - state all facts, including time, place of incident, names of persons involved, etc.
It is alleged that on August 1, 1975 Ms. Sandra Connor, the immediate supervisor of the grievant, wrote and placed into the working files of Ms. Graham an arbitrarily capricious letter. The letter states that Ms. Graham has a "caustic and abrasive behavior" ~~patients~~ toward patients and co-workers without being given, shown, or told of any documented proof of a caustic and abrasive behavior.

Relief sought
This letter of August 1, 1975 ~~is to be~~ removed from Ms. Graham working files. This should be so stated in a written letter to the grievant, Mr. Mary Graham.

Employer's Signature <i>Mary J. Graham</i>	Employe Representative's Signature Timothy Solbert	Date Submitted September 19, 1975
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The main issue in this grievance is whether or not the letters of August 1, 1975 and August 11, 1975 constitute disciplinary action against the employe. Wisconsin Statutes 16.28(1) define disciplinary actions, and the letters in question do not constitute discipline as defined under that section; therefore, the grievance is denied.

Employer's Signature Robert A. Parnell	Title PERSONNEL MANAGER	Date Received 7/27/75	Date Returned 10/6/75
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INSTRUCTIONS

APPELLANT'S

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EXHIBIT # 4

See your collective bargaining agreement for time limits for presenting and acting on grievances. Failure to observe these time limits will result in loss of appeal rights. These time limits may be extended only by mutual agreement.

1244 Sweeney Ct.
Apt. #4
Middleton, WI 53562

10 October 1975

PERSONNEL BOARD
STATE OF WISCONSIN
MADISON

OCT 15 PM 3 48

Mr. Percy Julian
State Personnel Board
1 West Wilson Street
Madison, WI 53701

Dear Mr. Julian:

I am currently employed at the University of Wisconsin, Madison, University Health Service. My classification is Clerk 2.

I am requesting an appeal on the letters of August 1, 1975 and August 11, 1975, which were placed into my files. In my opinion, the letters are arbitrarily abusive and there is no just cause for the allegations. The letters are also an abuse of discretion on the part of my supervisor. I am appealing these letters under Wisconsin Administrative Code: Chapter Pers 26.02 Paragraphs 4 and 8.

I am also appealing the right to have union representation at predisciplinary hearings. On August 8, 1975, I gave a written request for representation at an August 11, 1975 meeting with my immediate supervisor Ms. Connors. I was denied representation.

I am not in a collective bargaining unit, but I am a union member.

I am appealing this under my basic rights as a full-time State Employee.

Please set a hearing in the above matters as soon as possible.

Sincerely,

Mary Graham
Mary Graham

APPELLANT'S

RECEIVED
OCT 15 1975

EXHIBIT # 5