



of the consequences to the employe and the disparate positions of the parties, considerations not present in an appeal of this nature.

Respondent further objects that the Appellant has not pursued his administrative remedies under the unilateral grievance procedures. The Appellant alleges not only that he has exhausted the unilateral grievance procedure but also that the matter is grievable pursuant to a collective bargaining agreement between AFSCME Council 24 and the state. There are disputed factual questions here which will require an evidentiary hearing or other proceeding to resolve.

Respondent urges that the appeal is untimely. Insofar as the appeal concerns Appellant's rights to a position that was open at the time the appeal was filed, it would not appear to be untimely. This question may also turn on the questions of if and how a grievance procedure was pursued.

Finally, Respondent objects to the representation of the Appellant at the prehearing conference by a person not licensed to practice law. In Laub v. Schmidt, Wis. Pers. Bd., 73-154, November 25, 1975, we sustained an objection to the representation of an Appellant at a hearing of a contested case by a person not licensed to practice law. We also noted that the decision did not apply to prehearing conferences. In that case we relied on certain language in State ex rel State Bar v. Keller, 16 Wis. 2d 377, 384 (1962), to determine what was the unauthorized practice of law before an administrative agency:

. . . respondent has examined witnesses and taken such steps as necessary to make a record upon which formal action may be taken by the commission adjudicating the rights of the parties.

A prehearing conference before the Personnel Board is an informal proceeding where settlement is discussed, the formulation of the issues is attempted, and exhibits and lists of witnesses are exchanged. These conferences are usually chaired by counsel for the Board and are not usually recorded. It is possible that a person who assists a party at such a proceeding might engage in the practice of law. On the other hand, when a person actually presents a party's case during a hearing of a contested case, it is very difficult to imagine circumstances in which this would not amount to the practice of law.

As we further noted in Laub, control of the practice of law, including the definition of what is the practice of law, is vested in the judiciary. See State ex rel Bar v. Keller, supra, at 387:

The legislature's creation of the public service commission with its rule-making powers does not in any way supersede the exclusive power of the judiciary, ultimately residing in the supreme court, to determine what is or is not the practice of law and to restrict such practice to persons licensed by the court to engage in it.


It is one thing, as we did in Laub, to act in aid of the judiciary's power of regulation by prohibiting practice before the Personnel Board that clearly constitutes the unauthorized practice of law, such as at hearings of contested cases. We believe, however, that it would be impinging on the exclusive power of the judiciary to define what is the practice of law for us to rule on objections to representation of parties at prehearing conferences. In light of the informal and flexible nature of the proceedings at prehearing conferences, we are not at all inclined to forbid all representation by persons not licensed to practice law at such conferences, as that would undoubtedly prevent a great deal of assistance that does not constitute the practice of law.

Therefore, in light of the exclusive power of the judiciary to define and regulate the practice of law, we conclude we should not rule on this objection. This is a matter for resolution by the judiciary.

ORDER

IT IS HEREBY ORDERED that Respondent's objections set forth above are overruled. The Appellant is ordered to serve and file within ten working days of the date of this Order copies of the steps of the grievance he states that he pursued. It is further ordered that the Respondent may at any time prior to the hearing request of the Appellant clarification or amplification of any aspect of this appeal.

Dated December 22, 1975. STATE PERSONNEL BOARD

  
Perry L. Julian, Jr., Chairperson

February 10, 1975

PERSONNEL BOARD  
STATE OF WISCONSIN  
MILWAUKEE

FEB 12 AM 8 07

Dear Sir:

RE: Stock Clerk 2 position now vacant at U.W.Parkside in the shipping and mailing department.

I was forced to accept a demotion in lieu of layoff from my M.V.O.1 position. I am at the present time destined to work my remaining time for the State as a B.M.H 2 on the third shift with no hope whatsoever of returning to my original day shift and pay range.

I was as stated an M.V.O 1 assigned to shipping and mailing department at Parkside. In this area my duties were very broad, every day for 4.5 years I picked up U.S.mail and inter-campus sorted, bundled, and then delivered it to its destination. I also performed Stock Clerk 2 duties for approximately two years before its inception here at Parkside.

There have been several openings here at Parkside in the pay range from which I was demoted, since none of these jobs were skilled I feel that I should have at least been allowed a chance at these positions if I didn't work out I would have returned to my present position.

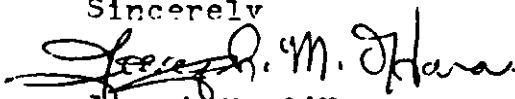
Please note that the vacancy I am concerned with is in the same department from which I was laid off from, and the Stock Clerk 2 duties I have performed numerous times.

It is interesting to note how broad your classification is when you are working in it and how narrow it becomes when you have served your purpose.

I would like to be returned to the shift and pay range for which I competed and was hired. I feel I should have this position as Stock Clerk 2.

I am therefore requesting a hearing officer in the enclosed matter

Sincerely



Joseph M. O'Hara  
6207-37th Ave  
Kenosha, WI 53140