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 BRUCE D. SCHRIMPF,  
 Appellant,  
 v.  
 VIRGINIA HART, Chairperson,  
 Dept. of Industry, Labor and Human  
 Relations and C. K. WETTENGEL, Director,  
 State Bureau of Personnel,  
 Respondents.  
 Case No. 75-84  
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**OFFICIAL**

INTERIM  
OPINION AND ORDER

Before: STEININGER, Vice-Chairperson, SERPE and WILSON, Board Members.

Chairperson Julian has recused himself from consideration of this case because of a potential conflict of interest connected with his private practice of law and a pending case involving Mr. Schrimpf as a hearing examiner.

NATURE OF THE CASE

This is an appeal of what is alleged to be a demotion. The Respondents have moved to dismiss the appeal on the ground that the Board lacks subject matter jurisdiction because this matter is cognizable under the labor agreement between the State and the Wisconsin State Attorneys Association, of which Mr. Schrimpf is a member. Based on unchallenged material in this file and on representations of the Appellant, we conclude that there are no disputes concerning the facts recited hereafter relating to our subject matter jurisdiction, and we enter the following findings of fact and conclusions of law solely for the purpose of deciding this motion.

FINDINGS OF FACT

Appellant's appeal, subscribed July 9, 1975, sets forth various allegations of mistreatment by one of his supervisors, Mr. Tyler, the latest of which involved an alleged demotion set forth in a memorandum dated June 19, 1975, and effective July 1, 1975. A copy of this memo is attached hereto. The alleged demotion constitutes the subject matter of the appeal:

- 7. Your appellant believes the June 19, 1975 memorandum of Mr. Tyler is but one more step in his campaign to 'punish' your appellant for exercising his rights as an employee of the State of Wisconsin. The form of punishment, your appellant believes, is to demote him without just cause therefore. Jurisdiction of the Personnel Board is grounded in Section 16.05 Wisconsin Statutes (1973), and Section Pers. 26.02(4) and 26.03 Wisconsin Administrative Code.

WHEREFORE your appellant demands that the June 19, 1975 memorandum of Mr. Robert R. Tyler relative to the creation of a new position of 'Deputy Director' in said Bureau and the assignment of duties of your appellant to said position by rescinded in its entirety, and that your appellant be restored to his rightful place and position in said bureau.

Prior to filing this appeal with the Personnel Board, Appellant had been advised by certain D.I.L.H.R. employes that its subject matter was not actionable under the union contract, to which Appellant is a party by virtue of his membership in the Wisconsin State Attorneys Association. He then wrote a letter dated July 1, 1975 to Virginia Hart, Chairperson, Department of Industry, Labor and Human Relations, requesting an internal hearing on the matter in lieu of an appeal to the Personnel Board. A copy of this letter is attached hereto. Ms. Hart responded by letter of July 7, 1975, rejecting this course as an improper procedure, and suggesting that Appellant pursue a grievance:

The proper procedure for you to follow would be to submit a grievance formally so that it could be heard at the various levels within the department, if necessary.

A copy of this letter is also attached.

In response to this letter, Appellant advised Ms. Hart by letter of July 9, 1975, that he was rejecting this course of action and filing an appeal with the Personnel Board:

Unfortunately this matter is not one which admits to the grievance procedure. By statute it must be taken directly to the Personnel Board. I have initiated this action.

A copy of this letter is attached.

Finally, a copy of Article IV, Section 6, and Article XII of the agreement between the State of Wisconsin and the Wisconsin State Attorneys Association, is attached.

#### CONCLUSIONS OF LAW

Assuming for the purpose of deciding this motion that the action taken was a demotion, it is included within the language of Article IV, Section 6, of the contract, which provides for the use of the grievance procedure for a "demotion, suspension, discharge, or written reprimand." Section 111.93(1), Wis. Stats., provides:

If no labor agreement exists between the state and a union representing a certified bargaining unit, employes in the union shall retain the right of appeal under S. 16.05(1)(d).

Section 111.93(3) provides:

If a labor agreement exists between the state and a union representing a certified or recognized bargaining unit, the provisions of such agreement shall supersede such provisions of civil service and other applicable statutes related to wages, hours and conditions of employment whether or not the matters contained in such statutes are set forth in such a labor agreement.

In Olbrantz v. Earl, Wisconsin Personnel Board 75-9, March 25, 1975, we held that this provision requires:

That grievances such as the instant one concerning a layoff be determined under the grievance provisions of the contract and that the civil service laws not be invoked to interfere with that process. The legislature has thus deprived this Board of jurisdiction over layoff appeals of employes, such as Appellant, whose grievance is expressly covered by a Union contract with the state. pp. 3-4.

This reasoning would apply in this case if the union contract applies to the subject matter of the appeal. The Appellant argues that the Respondents' position is refuted because Appellant requested an internal review of the matter before he filed with the Board:

The foregoing effectively refutes the major proposition of Mr. Main's July 31, 1975, letter, since prior to taking this action to the Personnel Board, I attempted an internal review of the problem with the appointing authority which request was refused.  
Appellant's letter of August 4, 1975, p. 2.

However the fact that Appellant tried to resolve the problem informally is irrelevant. In light of our holding in Olbrantz, the appropriate procedure would have been, as Ms. Hart suggested, a grievance. Furthermore, Ms. Hart's letter of July 7, 1975, is explicit in advising that Appellant pursue a grievance. There is no question of an equitable estoppel.

The only question concerning the applicability of Article IV, Section 6 of the contract is raised by the fact that the contract by its terms, Article XII, terminated on June 30, 1975, and contained the following provision:

Upon termination of this Agreement the provision of the grievance procedure shall continue in effect for such

period of time as is necessary to complete the processing of any grievance instituted prior to the termination of the Agreement.

Appellant did not institute a grievance prior to the expiration of the contract. However, it is not apparent on this record whether Appellant received actual notice of the July 19, 1975, memo prior to July 1, 1975. If he did not receive actual notice of the memo until July 1, 1975, the day after the contract expired, it seems clear that his appeal rights would have been outside the contract and he would have had the right to appeal to the Personnel Board pursuant to SS. 111.93(1) and 16.05(1)(e), Wis. Stats. However, if he had received actual notice of the memo prior to July 1st, he would have had a vested right of appeal pursuant to the contractual grievance procedure at that time. This situation would present the seemingly difficult question of whether the vested right to appeal under the contract would bring this matter under the aegis of S. 111.93(3), and our holding in Olbrantz, or whether the fact that the effective date of the action, July 1st, being after the termination of the contract, would bring into play S. 16.05(2), which utilizes for appeal purposes the date of notification or the effective date, whichever is later, and SS. 111.93(1) and 16.05(1)(e).

Inasmuch as neither party discussed the issues created by the termination of the contract, that this motion goes to the question of our subject matter jurisdiction, and that there exists the possibility that the contract might have been extended by an independent document, or that there might be other relevant facts not presented on this motion, we will deny this motion with leave to renew it dependent on the development of the appropriate factual foundation.

APPELLANT'S MOTION FOR ORDER  
COMPELLING ANSWER

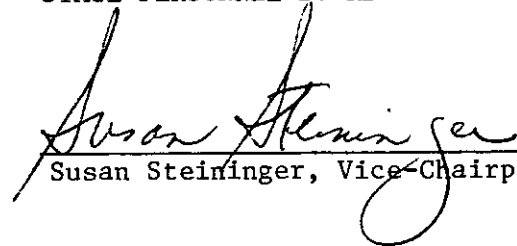
Appellant has requested that Respondents be required to file an answer admitting or denying the specific allegations of the appeal. Written answers are not normally required by Board practice. However given the fact that this appeal alleges that the demotion was part of an ongoing course of conduct, the incidents of which were specifically pleaded, we conclude that it would be in the interest of administrative efficiency to require a written response.

ORDER

IT IS HEREBY ORDERED that the motion to dismiss is denied with leave to renew it in a manner consistent with this interim opinion.

IT IS FURTHER ORDERED that Respondents serve and file an answer or other responsive pleading, which admits, denies, or otherwise responds to the specific allegations of the complaint, within ten working days of the prehearing conference.

Dated November 26, 1975. STATE PERSONNEL BOARD


  
\_\_\_\_\_  
Susan Steininger, Vice-Chairperson

Date: June 19, 1975

File Ref:

To: Thomas Dale

From: Robert R. Tyler



Subject: Assignment of Leonard Tokus

- I. As per my discussions with you during the past month, I am assigning Leonard Tokus, hearing examiner, as the Acting Deputy Director of the Legal Services Bureau, effective July 1, 1975.
- II. The role of Acting Deputy Director will be a part-time assignment to help increase the productivity of the Legal Services Bureau. Mr. Tokus' primary assignment, as Deputy Director, will be to:
  1. Make decisions on requests for reschedules for hearings,
  2. Assist in development of a Legal Services procedure manual, and
  3. Act as Bureau Director in the absence of the Bureau Director.These activities should consume about 15% of his time.

DEPT. OF INDUSTRY, LABOR  
AND HUMAN RELATIONS

JUN 23 1975

Div. of Equal Rights-Legal Services  
RECEIVED

cc: Chairman Hart  
Leonard Tokus

Exhibit 4



MILWAUKEE STATE OFFICE BUILDING  
818 N. 6TH ST.  
MILWAUKEE 53203

PLEASE REPLY TO:  
EQUAL RIGHTS DIVISION  
July 1, 1975

Mrs. Virginia B. Hart  
Chairman  
Department of Industry, Labor  
& Human Relations  
201 East Washington Avenue  
Madison, Wisconsin 53701

Dear Mrs. Hart:

This letter is being written with reference to the Memorandum of Mr. Robert R. Tyler dated June 19, 1975. In that memo Mr. Tyler created and filled a new position in the Bureau of Legal Services, namely the position of "Deputy Director." A number of duties were assigned to this position which included among other things, "Act(ing) as Bureau Director in the absence of the Bureau Director." Lesser duties included allowing or disallowing requests for postponements and drafting a Legal Services procedure manual.

I am enclosing a copy of a memorandum dated March 27, 1973 which summarized a meeting in the office of Commissioner John C. Zinos on March 26, 1973. As a result of that meeting the position of "Associate Director" was created. I was named Associate Director. The memo is self-explanatory with respect to the division of duties between Director and Associate Director. In effect, the Associate Director acted as Bureau Director in the absence of the Director.

The June 19, 1975 Memorandum from Mr. Tyler was issued while I was away from the office attending required military training. It came without any prior indication from either Mr. Tyler or Mr. Dale that I was in any way deficient in any manner in which I performed my duties as Associate Director. Indeed, it came at a time when production of case decisions in the Bureau was higher than it had ever been, and every indication being that it could go higher.

By a reduction in position, I consider the June 19, 1975 memo to be an attempt at disciplining me without cause. It is also consistent with the harassment to which I have been subjected since I prevailed in a grievance filed against Mr. Tyler for denying me a merit increase in July, 1974. It appears my only option for obtaining a review of this action is to request the intervention of the Personnel Board under the provisions of Pers. 26.02 (4) and Pers. 26.03 Wisconsin Administrative Code (1972).

Mrs. Virginia B. Hart  
July 1, 1975  
Page 2

I would personally dislike taking such action, preferring to have this matter settled internally. I would suggest a meeting be set up, with yourself chairing such a meeting, Mr. Tyler, Mr. Dale and myself present. I would ask the right to ask Mr. Tyler certain questions, and confront him with various pieces of documentary evidence. I would also ask that the meeting be transcribed. Based on the evidence then presented, you could render a decision on whether or not the June 19, 1975 Memorandum should be rescinded. Since time is of the essence, and I have but fifteen days from the effective date of Mr. Tyler's June 19, 1975 Memorandum to take this matter to the Personnel Board, I would hope this entire matter can be disposed of before July 8, 1975 to allow time for me to file the necessary papers before the Personnel Board, should such action be necessary.

Sincerely,

Bruce D. Schrimpf, Associate Director  
Bureau of Legal Services

BDS:it

CC: Commissioner John C. Zinos  
Commissioner William A. Johnson  
Mr. Robert R. Tyler  
Mr. Thomas W. Dale

Enc.





State of Wisconsin \ DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS

July 7, 1975

201 EAST WASHINGTON AVENUE  
BOX 2209  
MADISON, WISCONSIN 53701

VIRGINIA B. HART  
CHAIRMAN

JOHN C. ZINOS  
COMMISSIONER

WILLIAM A. JOHNSON  
COMMISSIONER

STEPHEN J. REILLY  
EXECUTIVE SECRETARY

Mr. Bruce D. Schrimpf  
2480 North Oakland Avenue  
Milwaukee, WI 53211

Dear Mr. Schrimpf:

I have reviewed your letter dated July 1, 1975, requesting that I chair a meeting to resolve the issue of whether or not you should continue to be designated the Associate Director of the Bureau of Legal Affairs, Equal Rights Division. I have concluded that this would not be the proper procedure.

The proper procedure for you to follow would be to submit a grievance formally so that it could be heard at the various levels within the department, if necessary. If you have any further questions regarding specific procedure, I would recommend that you contact our Department's Personnel Office.

Sincerely,

*Virginia B. Hart*

Virginia B. Hart  
Chairman

rh

cc: Commissioner John C. Zinos  
Commissioner Wm. A. Johnson  
Robert R. Tyler  
Thomas W. Dale



MILWAUKEE STATE OFFICE BUILDING  
810 N. 6TH ST.  
MILWAUKEE 53203

PLEASE REPLY TO:

EQUAL RIGHTS DIVISION

July 9, 1975

Mrs. Virginia B. Hart  
Chairman  
Department of Industry, Labor,  
and Human Relations  
201 East Washington Avenue  
Madison, Wisconsin 53701

Dear Mrs. Hart:

Thank you very much for your letter of July 7, 1975. I appreciate the prompt response.

Unfortunately this matter is not one which admits to the grievance procedure. By statute it must be taken directly to the Personnel Board. I have initiated this action. I regret the necessity of doing this.

Sincerely,

Bruce D. Schrimpf, Associate  
Director, Bureau of Legal Services

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The grievance procedure set out above shall be exclusive and shall replace any other grievance procedures for adjustment of any disputes arising from alleged violations of provisions of this Agreement, including grievances involving the mandatory subjects of bargaining, whether or not such subjects are specifically covered in this Agreement.

#### Section 5.

The Association will designate a total of five (5) grievance representatives for the bargaining unit.

The Association shall notify the Employer in writing of the names of the grievance representatives and their respective jurisdictional areas within thirty (30) calendar days after the effective date of this Agreement. Any changes thereto will be forwarded to the Employer by the Association as soon as the changes are made.

#### Section 6 Discipline

The parties recognize the authority of the Employer to suspend, demote, discharge or take other appropriate disciplinary action against employes for just cause. An employe who alleges that such action was not based on just cause, may appeal a demotion, suspension, discharge, or written reprimand taken by the Employer beginning with the Third Step of the grievance procedure except that written reprimands shall begin with the First Step of the grievance procedure.

#### Section 7 Exclusion of Probationary Employes.

Notwithstanding Section 6 above, the retention or release of probationary employes shall not be subject to the grievance procedure.

#### Section 8 Processing Grievances.

Local Association Representatives and grievants will be permitted a reasonable amount of time to process grievances during their regularly scheduled hours of employment.

with respect to any subject or matter referred to or covered in this Agreement, or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both of the parties at the time that they negotiated or signed this Agreement.

Should any part of this Agreement or any provision contained herein be declared invalid by operation of law or by any tribunal of competent jurisdiction, such invalidation of such part or provision shall not invalidate the remaining portions hereof and they shall remain in full force and effect.

Section 2.

The term "work day" as used in this Agreement means days exclusive of Saturdays, Sundays and holidays.

ARTICLE XII

TERMINATION

Section 1.

The terms and conditions of this Agreement shall continue in force and effect commencing at 12:01 a.m., on July 8, 1973, and terminating at 12:00 midnight on the 30th day of June, 1975. Upon termination of this Agreement, the provisions of the grievance procedure shall continue in effect for such period of time as is necessary to complete the processing of any grievances instituted prior to the termination of the Agreement.

In the negotiation of a future agreement, the Association agrees to submit its initial demands to the Employer on or before September 15, 1974. The Employer will make its initial offer to the Association demands on or before November 1, 1974.