STATE OF WISCONSIN PERSONNEL BOARD

* *

RICHARD R. OLBRANTZ,

Appellant,

v.

ANTHONY S. EARL, Secretary,
Department of Administration,

Respondent.

Case No. 75-9

* *

OPINION

AND

ORDER

Before JULIAN, Chairman, STEININGER and SERPE.

OPINION

Appellant, Richard R. Olbrantz, was employed in the Management Services Section of the State Bureau of Planning and Budget, Department of Administration, as Census Coordinator in the Census Clearinghouse and was classified as a Research Analyst 4. On January 10, 1975, the Respondent notified the Appellant in writing that Appellant would be laid off from his position effective January 31, 1975, due to "the steadily declining requests on transactions handled by the Census Clearinghouse." Appellant was also informed that as a result his position as Census Clearinghouse Coordinator was being eliminated.

On January 22, 1975, Appellant filed a timely appeal with this Board. As this is an appeal from the action of an appointing authority relating to a layoff, the jurisdictional base for the Board to consider it is Sec. 16.05(1)(e), Wis. Stats., which empowers the Board to hear such appeals when prosecuted by employees with permanent status in class. It is undisputed that Appellant has permanent status in class. It is also clear that the Appellant is a member of the "Research, Statistics and Analysis" collective bargaining unit which is represented by a union. That union -- the State Association of Career Employees -- has a labor

agreement with the State of Wisconsin which was in full force and effect at all times material to this appeal.[1] Article IX of the said agreement is entitled "Layoff Procedure" and sets out the procedure to be followed when management exercises as it did here its right, expressly recognized in the agreement, to lay off State employees covered by the agreement. See Sec. 111.90(3), Stats. We are thus met by the threshhold question of whether the Board has jurisdiction over the instant appeal.

Sec. 111.93, Stats., clearly indicates that the Board is without jurisdiction over appeals from employees situated as is this Appellant. Subsection (1) of Sec. 111.93, Stats., recites as follows:

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

The quoted statute contemplates a scheme whereby the exclusive remedy for an employee challenging his layoff is through the contractural grievance procedure established under the contract. And subsection (3) of Sec. 111.93 states as follows:

> "If a labor agreement exists between the state and a union representing a certified or recognized bargaining unit, the provision 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 matter contained in such statutes are set forth in such labor agreement." (Emphasis supplied.)

A layoff is a termination of active employment by an appointing authority and, as such, comes within the meaning of the phrase "conditions of employment" as it appears in Sec. 111.93(3), Stats. See Richards v. Board of Education, 58 Wis. 2d 444, 460b (on motion for rehearing). Subsection (3) of Sec. 111.93 thus makes explicit what subsection (1) of Sec. 111.93 left implicit--that the Legislature intended that grievances such as the instant one be determined under the grievance provisions of

---

[1] The labor agreement between the Union and the State was ratified by the Legislature and became effective on July 1, 1973. It will not terminate until June 30, 1975. See Ch. 78, Laws of 1973.

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 employees, such as Appellant, whose grievance is expressly covered by a Union contract with the State.[2] See also Secs. 16.01(3), 16.28(1)(a), 111.93(2), Stats.

Appellant contends in supplemental materials filed with this Board that there is no just cause standard for layoffs contained in the contract and that, in effect, no labor agreement exists between the union and the State for the purpose of challenging a layoff when it is alleged that such layoff is not based on just cause. As Appellant states in his "Addendum" to his letter of January 28, 1975, to the Personnel Board:

> "If management does follow the applicable /layoff/ provisions contained in the /Labor/ Agreement, affected employes cannot utilize the grievance procedure to grieve the layoff, even when it is alleged that the layoff was not based on just cause... Since our Agreement does not contain any provisions for either grieving or appealing when an employe is laid off without 'just cause,' we are entitled to the same rights of appeal as...civil service employes...." (Emphasis in the original.)

Implicit, however, in Appellant's argument is the notion that contractual layoff procedures must incorporate a just cause standard before it may correctly be said that the provisions of the contract supersede the civil service statutes. We

---

[2] Because of the express inclusion of a layoff procedure provision in the terms of the written agreement, we have no occasion to consider the jurisdictional problems presented when an item such as a layoff procedure, though clearly bargainable under Sec. 111.91(1), Stats., has not been bargained for and therefore has not been included in the contract, and the item is covered by the civil service law and rules. Sec. 111.93(3), Stats., by its terms would appear to oust this Board from jurisdiction over such cases, for it provides that the civil service law and rules are superseded by the provisions of the agreement "whether or not the matter contained in such statutes are set forth in such labor agreement." Whether a permanent employee who, in these circumstances, was arbitrarily laid off would have suffered a legal wrong and have been denied a remedy therefor contrary to Art. I, Sec. 9 of the Wisconsin Constitution is an admittedly thorny question on which we intimate no views. See especially, Hortonville Education Association v. Hortonville Joint School District No. 1, Case No. 635 (Wis. Sup. Ct., filed February 8, 1975), pp. 21-22. See also, Metzger v. Dept. of Taxation, 35 Wis. 2d 119, 128-130; Ross v. Ebert, 275 Wis. 523, 526-527; Scholberg v. Itnyre, 264 Wis. 211, 213; State ex rel. Wickham v. Nygard, 159 Wis. 396, 400.

think all that is necessary for our jurisdiction to be supplanted by the contractual grievance procedure is that the item be bargainable under the State Employment Labor Relations Act, Subch. V of Ch. 111, and that it actually have been bargained for and included within the terms of the contract. The fact that the protection afforded employes under the contractual layoff procedure may not be as extensive as that afforded employes under the civil service statutes (See Sec. 16.28, Stats.) does not mandate that the provisions of the latter fill in those particulars left unbargained for in the former in regard to the layoff procedure. This must be left to the processes of bargaining and arbitration. The rights guaranteed State employes under the civil service law, Subch II of Ch. 16, may not supplant, which is to say, take the place of the rights guaranteed state employees under the State Employment Labor Relations Act, Subch. V of Ch. 111. Sec. 16.01(3), Stats. For us to assume jurisdiction over the instant appeal would be to intrude upon an area the Legislature clearly intended we should not.

Accordingly, the instant appeal will be dismissed.

ORDER

IT IS THEREFORE ORDERED that the appeal of the Appellant herein is dismissed.

Dated March 25, 1975

STATE PERSONNEL BOARD

By

Percy L. Julian, Jr., Chairman