

STATE OF WISCONSIN

STATE PERSONNEL BOARD

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ROBERT D. SCHULTZ,
NORB OTTERSEN,
FRED A. WASHA,
RICHARD GARTMAN,
MICHAEL J. MICKLAS,

Appellants,

v.

SECRETARY, Department of Revenue,

Respondent.

Case No. 76-185
Case No. 76-186
Case No. 76-187
Case No. 76-188
Case No. 76-190

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OFFICIAL

ORDER

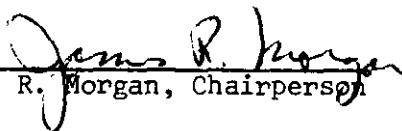
Before: James R. Morgan, Calvin Hessert and Dana Warren, Board Members.

ORDER

The Board concurs with the hearing examiner that it lacks subject matter jurisdiction over these appeals, but it feels that the dictum in the Proposed Opinion and Order should be deleted. Therefore, the Board adopts as the final decision in these appeals the "Nature of the Case," Finding of Fact," the first paragraph of the "Opinion," and the "Order" set forth in the attached Proposed Opinion and Order.

Dated: 2-20, 1978

STATE PERSONNEL BOARD


James R. Morgan, Chairperson

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ROBERT SCHULTZ, NORB OTTERSON,
 FRED A. WASHA, RICHARD GARTMAN,
 and MICHAEL J. MICKLAS,

Appellants,

v.

SECRETARY, DEPARTMENT OF REVENUE,

Respondent,

Case Nos. 76-185, 76-186, 76-187,
 76-188, and 76-190

* * * * *

PROPOSED
OPINION AND ORDER

Before:

NATURE OF THE CASE

This is an appeal of a grievance pursuant to s. 16.05(7), Wis. Stats. The respondent filed a motion to dismiss for lack of subject matter jurisdiction. The decision on this motion was reserved until after a plenary or full hearing. Inasmuch as the board must conclude that the motion must be granted and the appeal dismissed, the following findings are limited to those facts which relate to jurisdiction.

FINDINGS OF FACT

1. The appellants at all relevant times have been employed in the classified service of the state with permanent status in class.
2. The appellants filed grievances in the unilateral or noncontractual grievance procedure which were denied at the third and final step and appealed to the Personnel Board.
3. These grievances concern decisions by the respondent to change the appellants' "headquarters" from their residences to departmental district offices.

4. The director's uniform grievance procedure, promulgated pursuant to SPers. 25.01, W.A.C., and the departmental grievance procedure, both provide that the decision of the agency at the third step shall be final except in cases alleging that the agency violated through incorrect interpretation or unfair application, a personnel rule or civil service statute, or a function which the director of the Bureau of Personnel has affirmatively delegated his authority to the appointing officer.

OPINION

The board is unable to find in subchapter II of Chapter 16 of the statutes, or in the rules of the director, Pers., W.A.C., any provision that encompasses the appellants' complaint. Section 16.04(1)(b), Stats., provides that appointing authorities shall: "Appoint persons to the classified service, designate their titles, assign their duties and fix their compensation, all subject to this subchapter and the rules of the director." However, these grievances do not involve appointments or titles or the assignment of duties, and there is nothing in this subchapter or the rules of the director which apply to the instant transactions. It has been alleged that the change in headquarters has resulted in a reduction in allowable reimbursable mileage and hence a reduction in compensation, which, if so, might provide an additional potential basis for jurisdiction on direct appeal pursuant to s. 16.05(1)(e), Stats. However, the board does not understand reimbursement for mileage to be pay or income.

While it must be concluded that there is no subject matter jurisdiction, the board feels it is appropriate to comment by way of dictum on the merits of this controversy inasmuch as a plenary hearing was held. It should be noted that this comment or dictum is not binding on the parties and is not meant to be a full scale exploration of the facts and the law involved.

The testimony at the hearing was substantially that there was no change in the duties and responsibilities of the appellants as a result of the change

in their headquarters from their residences to the various agency offices. This is because the great majority of their work is performed in the field at the businesses of the various accounts and they have no reason to use offices.

The expressed agency rationale for the change in location of the employees' headquarters was, at least in part, to save on travel expenses since reimbursable mileage is generally less when computed from the new headquarters rather than the employees' residences. Another reason was to provide a place where taxpayers could call and leave messages for the employees (while the appellants normally take calls at home and get messages through their families, there is no requirement that their home phones be attended during all business hours).

Section 16.535(6), Wisconsin Statutes (note that this is in Subchapter III, "FINANCE," of Chapter 16, and not in subchapter II, "CIVIL SERVICE"), provides in part: "Employees shall be reimbursed for their actual transportation expenses when traveling in the performance of their official duties" Section 20.916(1) provides in part: "State officers and employees shall be reimbursed for actual, reasonable and necessary traveling expenses incurred in the discharge of their duties in accordance with s. 16.535." Section 20.916(8), provides in part: "The department of administration shall establish uniform guidelines regarding employe travel expenses" The Department of Administration guidelines on travel expenses defines "headquarters city" as follows:

". . . includes the area within the city or village limits where an employe's permanent work site is located and the area within a radius of fifteen miles from the employe's permanent work site. The head of the department or delegated designee shall determine the employe's permanent work site in the best interest of the state."

The "interest" served by the reassignment of the headquarters of these employes primarily is that of saving travel expenses. However, the reassignment also provided a telephone in a state office where clients would be able to leave messages for these employes. The appellants argued that their wives have and continue to take messages for them at home. This practice is undoubtedly

efficacious, but there is no requirement that this service be provided or that employes in this classification not live alone. The department was not prevented from using this consideration as a factor in determining the location of the headquarters city.

While it appears that the transaction in question was not improper in a legal sense, it does raise some questions of equity. Under the pre-existing arrangement whereby employes utilized their residences as "headquarters," they were required to locate their residences within a certain degree of proximity to their accounts. This requirement had a direct bearing on the housing location and relocation of various of the appellants.* In the background of their continuing acceptance of these conditions of employment were certain arrangements regarding payment of milage expenses. In some cases, they now face a reduction in such reimbursement despite no decrease in their actual mileage. In the board's opinion, the agency should have provided some kind of grandfather clause in connection with the instant transaction, and it recommends that the agency consider what might be done along these lines at this point in time.

ORDER

These appeals are dismissed for lack of jurisdiction.

Dated: _____, 1978. STATE PERSONNEL BOARD

James R. Morgan, Chairperson

* For example one of the appellants lived at one time within four miles of the Milwaukee State Office Building. When he was hired by the department, he agreed to move to the outer edge of the city at the agency's request.