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 JAMES WIX and JAMES HANSON, \*  
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 Appellants, \*  
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 Request for Investigation \*  
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 Case No. 76-225-I \*  
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**OFFICIAL**

OPINION AND ORDER

Before: DEWITT, Chairperson, HESSERT, MORGAN, and WARREN, Board Members.

OPINION

The complainants are employed by the Wisconsin State Patrol, Department of Transportation, as State Troopers 1 and 2, respectively. They make a number of allegations that their agency has violated their right to freedom of speech. Mr. Hanson was quoted in an article in the Milwaukee Journal as critical of the Kenosha County District Attorney's policy on Illinois drunk drivers. He subsequently received a written reprimand stating that his criticism hurt the image of the state patrol and that positions on the patrol should not be used to air personal opinions to the general public. He filed a contractual grievance over this reprimand which was denied at the third step. The union declined to process his grievance beyond the third step.

Mr. Wix wrote a letter to the editor of the Milwaukee Journal expressing his opinion about an article printed by that paper concerning a Wisconsin sheriff's views of the state patrol. Mr. Wix also received a similar reprimand, and he also filed a contractual grievance. At the time of filing his investigation request with the board, this grievance had been denied at the first two steps.

We conclude that regardless of the merit or lack of merit in the claims of constitutional infringement this is not an appropriate case in which to exercise the discretionary investigatory power conferred by Section 16.05(4), stats.:

"The board may make investigations and hold hearings on its own motion or at the request of interested persons and issue recommendations concerning all matters touching the enforcement and effect of this subchapter [Subchapter II, Chapter 16] . . . ." (emphasis supplied)

Section 111.93(3), stats., 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 relating to wages, hours and conditions of employment whether or not the matters contained in such statutes are set forth in such labor agreement."

Article IV, Section 5 of the agreement between AFSCME and the state, which covers the situation in question here, states as follows:

"The grievance procedure set out above shall be exclusive and shall replace any other grievance procedure for adjustment of any disputes arising from the application and interpretation of this agreement."

The agreement further explicitly provides for the appeal of reprimands through the grievance procedure. Article IV, Section 9.

Under the relevant statutes and the agreement between the union and the state, the contractual grievance procedure provided the appropriate, sole, and exclusive forum for this dispute between the employer and these two employes. In this context, the dispute is not a matter touching the "enforcement and effect" of subchapter II of Chapter 16 of the statutes and an investigation pursuant to Section 16.05(4), stats., is inappropriate.

ORDER

This request for investigation is denied.

Dated April 25, 1977

STATE PERSONNEL BOARD

  
Laurene DeWitt, Chairperson