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NORBERT M. HOLMBLAD,

Appellant,

v.

VIRGINIA HART, Chairperson,
 Department of Industry, Labor and
 Human Relations,

Respondent.

Case No. 76-229

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OFFICIAL
 OPINION AND ORDER

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

At the prehearing conference held in this matter the Respondent moved to dismiss the appeal for lack of subject matter jurisdiction. It was agreed that the case would be placed on the calendar for hearing on the merits and a determination on the jurisdictional issue would be made in the interim. The Respondent subsequently filed a brief in support of his motion.

The Appellant filed this matter as a grievance in DILHR as follows:

"The salary schedule for Management Information Specialist 1 thru 6 provides smaller increments and has a lower maximum than the salary schedule for Management Information Specialist 1 thru 6 Confidential, despite the fact that the training, experience and job assignments for both classes are the same."

The grievance was denied for the stated reason that the development of the pay plan is the responsibility of the Director of the Bureau of Personnel. The Appellant then filed an appeal with this board on October 28, 1976.

The Respondent's position is two-fold. First, he argues the Board lacks jurisdiction because there is no decision of the Director to appeal via Section 16.05(1)(f), stats., nor is the subject matter grievable under Section 16.05(7), stats. Second, that even if the case did involve

a decision of the Director, the board would lack jurisdiction because the appeal was untimely pursuant to Section 16.05(2), stats.

With regard to the first contention, Respondent argues that the appeal is really that of a legislative committee, since the joint committee on Employment Relations must approve and may modify the Director's compensation plan proposal. Section 16.086(3)(b), stats., provides, as relevant:

"The [director's] proposal, as may be modified by the joint committee on employment relations together with the unchanged provisions of the current compensation plan shall for the ensuing fiscal year or until a new or modified plan is adopted pursuant to this subsection, constitute the state's compensation plan for position in the classified service. Any modification of the director's proposed changes in the compensation plan by the joint committee on employment relations may be disapproved by the governor within ten calendar days. A vote of six members of the joint committee on employment relations is required to set aside any such disapproval of the governor."

Prior to submission to the joint committee, the Director must submit his proposals to the Personnel Board, whose function is limited to providing "advice and counsel." Section 16.086(3)(b), stats.

It appears to us that there is a basic incompatibility between this limited "advice and counsel" function specifically provided for this board in the compensation plan process and the assumption of a plenary review jurisdiction pursuant to Section 16.05(1)(f), stats., of actions of the Director associated with his proposals regarding the compensation plan. In Section 16.086 the legislature has provided a rather unique process that involves the Director, the Personnel Board, the joint committee on employment relations, and the Governor. There are specific roles for each with a potential for functional input by the Director, the committee, and the Governor. The committee can modify the Director's proposals subject to what amounts to a veto by the Governor, subject in turn to being

overridden by the committee. The Board's role is limited to providing advice and counsel to the Director. It would be totally incongruous and at odds with the evident legislative intent if the Personnel Board had a plenary review power over the entire pay plan once it had been approved through the operation of the Section 16.086 procedure. This is a situation calling forth the rule that the more specific statute controls over the more general one. See Schlosser v. Allis-Chalmers Corp., 65 Wis. 2d 153, 161, 222 N.W. 2d 156 (1974): ". . . where two statutes deal with the same subject matter, the more specific controls."

Therefore, we conclude that we have no jurisdiction of this case as an appeal of a decision or action of the Director pursuant to Section 16.05(1)(f), stats. The same reasoning supports the conclusion that there is no basis for jurisdiction as an appeal of a grievance pursuant to Section 16.05(7), stats. Further, the non-contractual employe grievance procedure, Administrative Practices Manual, personnel administration, effective August 24, 1966, revised October 1, 1974, Section I.D.1.h. provides that ". . . this [third step] answer shall be final and binding except for those grievances involving matters enumerated under standard b-1) or b-2) when the employe chooses to appeal the decision of the agency head to the State Personnel Board." These standards encompass:

". . . complaints which allege that an agency has violated, through incorrect interpretation or unfair application:

1) a rule of the Director, State Bureau of Personnel or a Civil Service Statute (Section 16.01-16.38, Wis. Stats.)

or

2) a function where the Director of the State Bureau of Personnel has expressly delegated his authority to the appointing officer"

The matters complained of in this case do not involve agency action at all, no less either one of the two enumerated areas above.

The process by which the compensation plan is developed and effectuated is certainly unique, as was pointed out above, involving the operations of two administrative agencies, a joint committee of the legislature, and the Governor. Public hearings accompany review of the plan by the Personnel Board and by the legislative committee. While the entire process is not equivalent to the enactment of legislation, it is analogous. Input into the process may be had at the various hearing stages. Changes in the Director's proposals may be made by the joint committee subject to a veto power exercisable by the Governor. Once approved, ". . . the proposal . . . shall for the ensuing fiscal year or until a new or modified plan is adopted pursuant to this subsection, constitute the state's compensation plan" Section 16.086(3)(b), stats. This is a legislatively mandated process in which the legislature's joint committee on employment relations plays a functional role. It appears that changes in the plan require resort to this process. The Personnel Board, however, does not have the jurisdiction to pass judgment on the plan.

ORDER

This appeal is dismissed and the scheduled hearing on the merits is cancelled.

Dated February 23, 1977.

STATE PERSONNEL BOARD



Laurene DeWitt, Chairperson