

CONCLUSIONS OF LAW

A recent case, Shew v. Weaver, Wis. Pers. Bd. 76-213 (3/21/77) discussed the interpretation of the statewide unilateral grievance procedure which the respondent implicitly has adopted by reference as regards matters which are appealable to the board:

" . . . Section Pers. 26.02(8), W.A.C., provides that 'Personnel actions which are appealable include . . . actions alleged to be illegal or an abuse of discretion.' Section Pers. 26.03(1), W.A.C. provides that decisions alleged to be illegal or an abuse of discretion which are not subject to 'consideration under the grievance procedure . . . collective bargaining or hearing by the board' are appealable to the director. See also Section 16.03(4)(a), stats.

The grievance procedure defines a grievance as 'a personnel problem involving an employe's . . . expressed feelings of unfair treatment or dissatisfaction with aspects of his/her working conditions within the agency which are outside his/her control.' This definition clearly covers the appellant's complaint in this case. Therefore, in accordance with Section Pers. 26.03(1), W.A.C, and Section 16.03(4)(a), stats., had he filed an appeal with the director it would have been objectionable pursuant to Section Pers. 26.03(1), W.A.C, and Section 16.03(4)(a), stats., quoted above, because these provisions prevent the director from hearing matters which are subject to the grievance procedure. So, although Section Pers. 26.02(8), W.A.C., clearly provides that actions alleged to be illegal or an abuse of discretion are appealable, there theoretically would be no appeal to the director, and pursuant to respondent's theory there would be no appeal to the Personnel Board from the denial of the grievance at the third step.

The administrative practices manual does not have the force of law accorded the administrative code. Provisions of the manual should be interpreted, if at all possible, in a manner consistent with the administrative code provisions, and not in a manner that would prevent the appeal of matters that the code makes appealable. Therefore, consistent with the holding in Graham, we interpret the APM to encompass allegations of abuse of discretion within matters appealable to the board. The APM provides for appeals where there is an allegation of a violation, through incorrect interpretation or unfair application, a rule of the director or a civil service statute. The provisions of Sections Pers. 26.02(8) and 26.03(1), W.A.C., and 16.03(4)(a), stats., providing for appeals of personnel actions which are alleged to be illegal or an abuse of discretion are procedural but also create substantive rights. The right to appeal actions which allegedly involve an abuse of discretion necessarily implies that if the reviewing body finds that the appointing authority abused its discretion, the action must be rejected. Thus, while neither the legislature by statute nor the director by rule has promulgated an admonition to agencies not to abuse their discretion in the administration

of personnel matters, the provision to employes of a right to appeal actions alleged to be an abuse of discretion provides for the functional equivalent. Accordingly, such an allegation in a grievance invokes paragraph I.D.1.b.1 and is appealable to this board."

In the instant case, we conclude that the issuance of a letter of reprimand is a personnel action,² as is the change in appellant's duties and responsibilities. The appellant alleged in his grievance that these actions were "illegal and an abuse of discretion."

ORDER

The respondent's motion to dismiss on the grounds that the board lacks subject matter jurisdiction is denied.

Dated April 25, 1977. STATE PERSONNEL BOARD


Laurene DeWitt, Chairperson

2. For the purpose of this analysis, such an action is comparable to other disciplinary actions which are personnel actions, such as discharges and suspensions.