



". . . 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.<sup>1</sup> The next question is whether it was alleged to be illegal or an abuse of discretion.

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<sup>1</sup>For the purpose of this analysis, such an action is comparable to other disciplinary actions which are personnel actions, such as discharges and suspensions.

A letter-brief submitted by appellant's counsel contains the following:

"Intertwined throughout the steps of the grievance procedure is an implied allegation that the letter of reprimand was an abuse of discretion on the part of the Departmental Secretary and illegal. Lest there be any doubt, we specifically allege same forthwith." (letter dated 3/4/77)

The grievance procedure does not contain any specific requirements as to the content of grievances. The general rule in administrative proceedings is that "pleadings are liberally construed and are not subject to the strict rules applicable to pleadings in judicial proceedings." 73 C.J.S. Public Administrative Bodies and Procedure, Section 120. In Wisconsin judicial proceedings a great deal of liberality is permitted with regard to the amendment of pleadings, see Section 802.09, stats., and it would be anomalous to be more restrictive in an administrative proceeding such as this. Accordingly, we conclude that the original grievance contained a sufficient allegation of illegality and abuse of discretion to invoke the jurisdiction of this board on appeal pursuant to Section 16.05(7), stats., and that the appellant should be permitted to amend his grievance and pleadings in this matter to allege that the issuance of the letter of reprimand was 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 and the appellant's grievance and pleadings in this matter are deemed amended as set forth above.

Dated April 25, 1977.

STATE PERSONNEL BOARD

  
Laurene DeWitt, Chairperson