STATE OF WISCONSIN		STATE PERSONNEL BOARD
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JAMES J. BRENNAN,	*	
	*	
Appellant,	*	OFFICIAL
	*	
V.	*	OPINION AND ORDER
	*	
SECRETARY, Department of Revenue,	*	
	ż	
Respondent.	*	
-	*	
Case No. 76-53 and 76-133	×	
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Before: James R. Morgan, Calvin Hessert and Dana Warren, Board Members.

NATURE OF THE CASE

These consolidated cases concern a number of transactions:

- 1. temporary reassignment of duties;
- 2. denial of overtime pay; and
- 3. an employe performance evaluation.

In an Interim Opinion and Order entered June 13, 1977, the Board denied a motion to dismiss for failure of subject matter jurisdiction. These cases are before the Board pursuant to \$16.05(7), Wis. stats. as appeals of denials of grievances at the third step.

The following issues were agreed to at the prehearing conference and formed the basis for the statutory notice of hearing.

- "1. Whether respondent's action of assigning appellant to the Hayward field office was illegal or an abuse of discretion.
 - 2. If the action is illegal or an abuse of discretion, then what remedy should be afforded, if any?
 - 3. Whether or not the Employe Performance Summary form was filled out as it was as a result of a grievance being previously filed.
 - 4. If the form was filled out as it was as a result of the prior grievance, was this an illegal act or an abuse of discretion?"

FINDINGS OF FACTS

1. At all relevant times the appellant has been a state employe with the Department of Revenue with permanent status in class.

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2. From Febraury 23, 1976, to June 9, 1976, the appellant was assigned to and did work part-time at the Hayward office while continuing to work his permanent assignment out of the Wausau office.

3. During this period the appellant worked approximately 139½ hours overtime for which compensation was not granted by the respondent.

4. The reasons for appellant's temporary reassignment to the Hayward office were as follows:

- a. The incapacity due to illness of the employe normally assigned to that office;
- b. The appellant's prior experience and his record of high production as a tax representative.

5. Appellant was in an exempt status for payment of overtime under the respondent's administrative directive and the rules of the director, § Pers. 5.06(4), Wis. Adm. Code.

6. The appellant filed a non-contractual grievance regarding the foregoing matters which was denied at all three steps and appealed to the board.

7. In May 1976 the appellant received an employe performance summary for the 6 month period ending April 30, 1976, Board's Exhibit 6.

8. The contents of this performance summary was not a result of a grievance previously filed by appellant.

CONCLUSIONS OF LAW

 The personnel board has jurisdiction over these appeals pursuant to \$16.05(7), Wis. stats.

2. The respondent's decision to temporarily reassign the appellant to the Hayward office was not illegal or an abuse of discretion.

3. It having been found that the performance summary was not filled out as it was as a result of a grievance being previously filed, it is concluded, based on the issues, that there was no illegal action or abuse of discretion in connection therewith. Brennan v. DOR Case No. 76-53 and 76-133 Page Three

OPINION

While reasonable people could differ about the merits of the management decision to assign appellant to the Hayward office, the question presented by this appeal is whether that assignment was illegal or an abuse of discretion, and this record does not support such a conclusion. With respect to the performance summary, the question was whether it was filled out as it was as a result of the appellant filing the first grievance. There was ample testimony presented that the evaluation was based in part on grousing, complaining and other actions by the appellant that was separate from the grievance. There was no direct evidence that the evaluation was a result of the grievance. As to overtime compensation, the appellant was an exempt employe. Compensation for those hours was within the discretion of the agency. The agency chose not to compensate appellant directly but did indicate that he would be entitled to take time off that otherwise would be chargeable as personnel holiday time. Again, while reasonable people could differ about the merits of the decision, there is no basis for a conclusion that it amounted to an abuse of discretion.

ORDER

The position of the respondent on these greivances is sustained and these appeals are dismissed.

Dated: <u>May 18</u>, 1978

STATE PERSONNEL BOARD

Morgan, Chairperson

^{*} There was evidence that part of the evaluation of appellant's attitude was based on a reason the board believes and the respondent concedes was inappropriate, the refusal by the appellant of his supervisor's dinner invitation. However, this aspect of the case is strictly speaking outside the scope of the stipulated. issue, and there were other reasons for the evaluation beside this incident.