OFFICIAL
INTERIM
OPINION AND ORDER

Before: DEWITT, Chairperson, WILSON, STEININGER, MORGAN and WARREN, Members. (DeWitt abstaining, Morgan dissenting.)

OPTNTON

I. Findings of Fact

Appellants are psychologists employed by the Department of Health and Social Services at Central Wisconsin Center. In October, 1973 the Center staff was reorganized into a unit system. This reorganization was made under the direction of Dr. Richard C. Scheerenberger, who is the director and appointing authority for the Center. As a result of the reorganization, the resident buildings (the units) at the Center have a heterogeneous resident/patient population and are served by a multidisciplinary team.

The effect of the reorganization was to allocate the developmental-behavioral services section of the pre-October, 1975 special services division to the consolidated resident living section and to structure it under the unit system. Under the reorganization Appellants who were previously assigned to the developmental-behavioral services section, and who reported directly to the director of that section, were assigned to particular units and were required to report directly to the unit coordinator for administrative purposes and to the professional services specialist-psychologist for professional purposes.

These Findings are made only for the determination of Respondent's motion to dismiss.

Appellants filed a grievance under the Departmental Grievance Procedure challenging the reorganization especially the new system of having the psychologists reporting to anyone other than the head psychologist. The grievance having been denied at the first three steps was appealed to the board by letter dated

May 5, 1976. On January 14, 1977 Respondent filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction. An evidentiary hearing on the motion was held on February 14, 1977.

II. <u>Conclusions of Law</u> The Board Lacks Jurisdiction To Hear This Appeal

Appellants urge that the Board has jurisdiction to hear this appeal under Section 16.05(7) and/or Section 16.05(4). The former section states that the Board "may be designated as the final step in a state grievance procedure." Respondents's department has so designated the Board. The grievance procedure provides in part:

The decision of the Secretary will be final and binding on all grievances filed under the Department procedures except those which alleges a violation, incorrect interpretation or unfair application of:

- 1. A rule of the Personnel Board or a civil service statute (S. 16.01-16.32).
- 2. A function which the Director of Personnel has affirmatively delegated his authority to the Department. Manual of Instructions and Administrative Orders Personnel, Department of Health and Social Services, Subject: Employe Relations, Chapter XIII, Page 4, Date Revised 7-23-70.

Appellants allege that the reorganization of Central Wisconsin Center into a unit system is a violation of Sections 15.02(4) and 16.01(2), Wis. Stats.

Section 15.02(4) provides in part that:

The head of each department or independent agency shall, subject to the approval of the governor, estabilish the internal organization of the department or independent agency and allocate and reallocate duties and functions not assigned by law to an officer or any subunit of the department or independent agency to promote economic and efficient administration and operation of the department or independent agency.

Van Susteren, Pers. Bd. 74-93 (December 24, 1974), reversed in part Voigt v.

Personnel Board, Case No. 145-300 (May 8, 1975) the issue of whether a specific reorganization was made in violation of the above cited section. That review was made in conjunction with an alleged violation of a civil service statute.

The Board had jurisdiction to hear the appeal under Section 16.05(1)(f), that is, authority to hear appeals from decisions of the Director. The primary issues which the Board determined in Voigt were whether the employee was transferred and whether that transfer was illegal. The Circuit Court agreed with the Board's determination that the transfer was illegal. However, the Court did not agree with its finding that the reorganization from which the employee's transfer resulted was in violation of Section 15.02(4).

In the instant case Appellants do not have the automatic right of appeal which existed in <u>Voigt</u>. However, the grievance procedure defines the Board's jurisdiction broadly. Appellants have alleged "a violation, incorrect interpretation or unfair application of" Section 16.01(2). Therefore, we conclude that we have jurisdiction to hear this appeal based on the record to date. We wish to emphasize at this juncture that we find we have jurisdiction over this matter because of the breadth of the grievance procedure provision. We will consider this grievance only insofar as it effects personnel matters and the civil service system. The Board does not intend to review the management of the institution, including the question of whether the reorganization referred to was wise or unwise in regard to health administration or professional judgment. Since we have determined we have jurisdiction under the grievance procedure, we will not reach the issue of whether there exists an additional basis of jurisdiction under Section 16.05(4).

ORDER

IT IS HEREBY ORDERED that Respondent's motion to dismiss is denied.

Dated 117000 21 , 1977.

STATE PERSONNEL BOARD

aurene DeWitt, Chairperson