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GREGORY LA FOND,

Appellant,

v.

ACTING SECRETARY, Department of
Veterans Affairs,

Respondent.

Case No. 77-128

* * * * *

OFFICIAL

OPINION AND ORDER

Before: James R. Morgan, Calvin Hessert and Dana Warren, Board Members.

NATURE OF THE CASE

This is an appeal of a decision of the director pursuant to § 16.05(1)(f), Stats. The respondent has objected to the Board's jurisdiction. The parties have filed briefs and the Board has reviewed the entire file.

FINDINGS OF FACT

1. The appellant's petition to the director pursuant to § 16.03(4), Stats., alleged essentially as follows:
 - a. That he was appointed to the position of Executive Assistant to the Secretary, Department of Veterans Affairs, pursuant to § 15.05(3), Stats.;
 - b. That following the discharge of secretary Moses by the Board of Veterans Affairs and its resolution expressing its intent "that all other staff and employes of the department remain in their current positions for the immediate future," Mr. Wills proceeded to discharge the appellant from his Executive Assistant position;
 - c. That such action was improper allegedly because it was in contravention of the board policy or directive as set forth in the resolution, that Mr. Wills as Acting Secretary lacked the authority for such action, that pursuant to § 15.05(3), Stats., the appellant could only be discharged by the officer who appointed him, and that the grounds for dismissal were false and therefore the dismissal was illegal and constituted an abuse of discretion.

2. That the director declined to accept jurisdiction over the petition for the following reasons:

"I wish to point out that the authority granted to the Director of the State Bureau of Personnel as specified in the Statutes, section 16.01(2), Wis. Stats., reads in part:

' (2) It is the policy of the state to maintain a strong coordinated personnel management program and to assure that positions in the classified service are filled through methods which apply the merit principle, with adequate civil service safeguards. To these ends the bureau of personnel with advice and quasi-judicial assistance by the personnel board shall develop, improve and protect a statewide personnel management program . . .'

This section is construed to mean that the statewide personnel management program is set up to administer the classified service. Furthermore, subchapter II, with the exception of certain definitions, relates entirely to the classified service.

Section 16.03(1) identifies the powers and duties of the Director and states:

' 16.03 Powers and duties of the director. (1) The director is charged with the effective administration of this subchapter. All powers and duties, necessary to that end, which are not exclusively vested by statute in the personnel board or appointing authorities, are reserved to the director.'

In the petition you cite section 15.05(3), which is very specific in that it states each secretary may appoint, outside the classified service, an executive assistant to serve at his pleasure."

CONCLUSIONS OF LAW

1. The Personnel Board has jurisdiction over the subject matter of this appeal inasmuch as the appellant is an interested party and the director made a decision. See § 16.05(1)(f), Stats.
2. The director's decision declining jurisdiction was correct.
3. This appeal fails to state a claim upon which relief can be granted.

OPINION

The respondent's objection to subject matter jurisdiction is not well founded since there is a decision of the director and the appellant is an interested party. The fact that the director's decision was that he lacked subject matter jurisdiction does not mean that if that is correct the Board lacks subject matter jurisdiction. Pursuant to § 16.05(1)(f), Stats., the Board has jurisdiction to review an appeal the director's decision on jurisdiction. However, the parties in their briefs have advanced arguments concerning the director's jurisdictional decision. This question can be determined by reference to the appellant's petition with the director and the director's response, both of which were submitted by the appellant with his appeal. The respondent's objection to subject matter jurisdiction accordingly will be construed as the equivalent of a motion to dismiss for failure to state a claim on which relief can be granted.

The appellant has pointed out that § 16.03(4)(a), Stats., provides that the director "shall hear appeals of employes from personnel decisions made by appointing authorities when such decisions are alleged to be illegal or an abuse of discretion . . ." and there is no restriction to employes in the classified service. The appellant argues that since there are no provisions of law expressly excluding the director's jurisdiction to hear the appeal, jurisdiction exists.

In his decision denying jurisdiction, the director cited § 16.01(2), Stats., titled "Statement of Policy":

"It is the policy of the state to maintain a strong coordinated personnel management program and to assure that positions in the classified service are filled through methods which apply the merit principle, with adequate civil service safeguards. To these ends the Bureau of Personnel with advice and quasi-judicial

assistance by the Personnel Board shall develop, improve and protect a statewide personnel management program . . ."

and § 16.03(1), "Powers and Duties of the Director":

"The Director is charged with the effective administration of this subchapter. All powers and duties, necessary to that end, which are not exclusively vested by statute in the Personnel Board or appointing authorities, are reserved to the director. (emphasis supplied).

Section 16.03(5) provides: "The Director may issue enforceable orders on all matters relating to the administration, enforcement and effect of this subchapter and the rules prescribed thereunder" (emphasis supplied).

As was pointed out by the Director, subchapter II, with the exception of certain definitions, relates entirely to the classified service. Section 15.05(3), Stats., provides: "Each secretary may appoint, outside the classified service, an executive assistant to serve at his pleasure." (emphasis supplied). The legislature has restricted the Director's authority to subchapter II of chapter 16 and this provides the limits of the Director's quasi-judicial authority under § 16.03(4)(a), Stats., and this provision must be read in conjunction with the other provisions of § 16.03 and 16.01(2), Stats., cited above. The reading urged by appellant would lead to the Director's jurisdiction not only over personnel transactions under § 15.05(3), Stats., relating to unclassified executive assistants, but also, for example, conceivably to personnel decisions made by an appointing authority (President, U.W.-System) regarding unclassified state employes (university professors). This type of result clearly is at odds with the statutory framework governing state employment and will not be reached by the Board.

ORDER

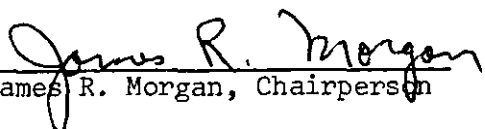
The decision of the Director declining jurisdiction over appellant's petition

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is affirmed and this appeal is dismissed.

Dated: May 18, 1978

STATE PERSONNEL BOARD


James R. Morgan, Chairperson