

STATE OF WISCONSIN

STATE PERSONNEL BOARD

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 SALLY DAHL,  
                   Appellant,  
 v.  
 DEPUTY DIRECTOR,  
 Bureau of Personnel  
                   Respondent.  
 Case No. 77-158  
 \* \* \* \* \*

INTERIM OPINION  
AND ORDER

**OFFICIAL**

Before: Morgan, Hessert and Warren, Board members.

NATURE OF THE CASE

This case involves a reclassification matter. The respondent has raised a number of questions relative to timeliness, the standing of the union to pursue this matter, and other procedural matters. The parties have filed written arguments and the board has considered the entire record. The following findings of fact are based on apparently uncontested matter appearing in the file and are limited to this interim decision.

FINDINGS OF FACT

This case was initiated by employe Sally E. Dahl by a letter dated August 10, 1977, and received by the board August 15, 1977. This letter contained in part the following:

"On July 28, 1977, I appealed to Duane Salstrom a rejection of a reallocation request from Clerk III to Job Service Assistant II. Today Ken Kavanaugh, LaCrosse Job Service Director, spoke with Mr. Salstrom who indicated to Mr. Kavanaugh that he would be forwarding my appeal letter to the Bureau of Personnel by the end of this week.

So it is my intention to appeal this denial under WSEU Clerical Contract (Council 24), Article 10, and DILHR Employe Handbook. Therefore, the following are my reasons for the appeal.

The memo notifying me of the rejection of my request for my reallocation was dated July 8, 1977, the memo was received by the Job Service

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Office Friday, July 15, 1977, and was handed to me on Thursday, July 21, 1977."

Ms. Dahl's letter of August 10, 1977, reflects that a copy was sent to Deputy Director Knoll. In any event, Mr. Knoll signed a letter dated September 1, 1977, to Ms. Dahl, informing her that at her request her Clerk 3 position had been reviewed and that her position would be reallocated from Clerk 3(PR 2-05) to Job Service Assistant I(PR 2-05) rather than to the requested level of Job Service Assistant 2(PR 2-06). The letter concluded:

" . . . we will initiate the action to reallocate your position to the Job Service Assistant<sup>^</sup>I level for the reasons cited earlier. If you wish to appeal our decision, you must submit written notification of that appeal to the State Personnel Board within 15 days of being notified of our decision."

In a prior letter to Ms. Dahl dated August 18, 1977, informing her that the request for review had been received and was being processed, Mr. Knoll had stated: "Any actions taken in connection with your request will be made effective October 9, 1977 . . ." Therefore, it is reasonable to infer, and it is found in the context of this interim decision, that the effective date for the reallocation referred to in the September 1, 1977, letter from Mr. Knoll to Ms. Dahl, was October 9, 1977.

On September 16, 1977, Chief Steward Senn local 1449 filed a contractual grievance form (all three steps were circled) alleging a violation of Article 10 of the contract, appealing the September 1, 1977, decision of the Bureau of Personnel regarding Ms. Dahl. This was denied on the same date (September 16th) by Job Service District Director Kavanaugh on the grounds that: "Appeals concerning classifications do not go through the grievance

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procedures agreed to in the contract."

Ms. Senn then sent the following letter, dated September 30, 1977, and received October 3, 1977, to the Personnel Board:

"I am dissatisfied with the third step decision on the case of Sally Dahl. Therefore, I would like the grievance appealed to the final step of the grievance procedure which is the Personnel Board."

In the meantime the Board had received on September 19, 1977, a letter dated September 16, 1977, from Local 1449 President Wiebel, which stated that Ms. Dahl had received a negative response from the Bureau regarding her reclassification. After raising a question concerning the union's standing to pursue and appeal, the letter ended ". . . consider this a timely appeal regarding the Bureau's decision in this matter."

In a letter to the Bureau of Personnel dated September 27, 1977, Ms. Dahl stated as follows:

"Even though I have decided not to go any further on the reclassification of my job I have no objection to the union taking over."

#### CONCLUSIONS OF LAW

This case involves at least two different personnel transactions and three appeals. The first transaction was the rejection of a request for reclassification from Clerk 3 to Job Service Assistant 3. By the Appellant's admission, she received notice of that denial on July 21, 1977. Her appeal of that denial was not received by the board until August 15, 1977, which is more than 15 days prescribed by §16.05(2), stats. Therefore, there is no jurisdiction over this appeal of this transaction.

The second transaction was the Bureau's reallocation of Appellant's position from Clerk 3 to Job Service Assistant I. This transaction was appealed

in two ways, the contractual grievance pursued by Ms. Senn and then appealed to the board and the September 16, 1977, letter to the board from Ms. Wiebel. Since classification matters are not subject to bargaining, such matters are not cognizable under the contractual grievance procedure. Furthermore, the board has no jurisdiction over appeals from denials of contractual grievances.\*

The second appeal of this transaction was contained in Ms. Wiebel's letter. This is a timely appeal of an action or decision of the director, see § 16.05 (1) (f), stats., pursuant to § 16.05(2):

"The board shall not grant on appeal under sub. (1)(e) or (f) unless a written request therefore is received by the board within 15 days after the effective date of the decision, or within 15 days after the Appellant is notified of such decision, whichever is later."

While Ms. Wiebel's letter, which was received by the board on September 19, 1977, may have been untimely from the standpoint of notice of the decision, contained in Mr. Knoll's letter of September 1, 1977, it is not untimely with regard to the effective date of the decision, October 9, 1977.

Ms. Wiebel also had standing as a union official to pursue this matter on behalf of Ms. Dahl or on behalf of the union with respect to any collective union interests that might be present. See Hoeft v. Carballo, Wis. Pers. Bd. 74-37 (5/24/76). While the respondent has argued that Appellant has indicated that she did not wish to pursue this appeal, the record on this point is ambiguous, as the Appellant's letter of September 27, 1977, evinces an intent or willingness to have the union pursue the matter. The question of her position with regard to this appeal is of course open to such further evidence as many be presented.

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\* It might be possible to interpret this appeal as a request for the appointment of an impartial hearing officer pursuant to Article X of the contract and §§ 111.91(3) and 16.05(1)(h), stats. However, since there is alternative basis for jurisdiction as set forth below, it is unnecessary to pursue this possibility further at this time.

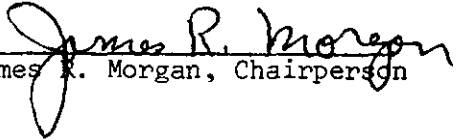
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ORDER

Respondent's objections to jurisdiction, timeliness, and standing  
are overruled.

Dated: 11-15, 1977

STATE PERSONNEL BOARD

  
James R. Morgan, Chairperson