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 JOSEPH MAKHLOUF, \*  
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                   Appellant, \*  
 \*  
 v. \*  
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 SECRETARY, Department of \*  
 Industry, Labor and Human Relations, \*  
 \*  
                   Respondent. \*  
 \*  
 Case No. 77-160 \*  
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OPINION  
AND  
ORDER

**OFFICIAL**

Before: Morgan, Hessert, and Warren, Board members.

OPINION

Nature of the Appeal

Appellant whose position is classified as auditor 2, has appealed the effect the new compensation plan has on his relative status within pay range PR 1-12 and as compared to other auditors 2 in his work section who have less seniority than he. Respondent moved to dismiss on the grounds that the appeal was not timely filed and that this Board lacks jurisdiction to hear this appeal under any of the appeal provisions of Section 16.05, Wis. Stats.

Facts<sup>1</sup>

Appellant works for the Department of Industry, Labor and Human Relations (DILHR), Job Service division, unemployment compensation, as an auditor 2. On or about July 29, 1977, he received a check which reflected the changes in his pay effective July 3, 1977. In addition he received a piece of paper entitled "Notice of Salary Changes Effective July 3, 1977." This notice set forth in numerical terms the changes in Appellant's salary. It did not otherwise explain those changes. Appellant received an increase in his hourly rate of pay.

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<sup>1</sup>At the prehearing conference it was agreed by the parties that the motion to dismiss would be decided without further briefs. These findings of fact are based upon the written record to date.

On August 12, 1977, Appellant filed the first step in the grievance procedure. (Board's exhibit #2 and Appendix A) This document was returned to him on August 15, 1977, by his supervisor who advised him to appeal to the Personnel Board. Appellant did so appeal by letter dated August 15, 1977. (Board's exhibit #1)

Appellant apparently does not question the salary range to which the auditor 2 classification has been assigned. Furthermore, Appellant appears not to question how the compensation plan was implemented nor the amount of the performance award he received either by itself or in comparison to other auditors 2 in his employing unit.

#### Conclusions

#### Jurisdiction

Respondent has moved for the dismissal of the instant appeal because the Board lacks jurisdiction to hear it under Sections 16.05(1)(e), (1)(f), (1)(g), (1)(h) or (7), Wis. Stats. Section 16.05(1)(e) states in pertinent part that the board shall:

Hear appeals of employes with permanent status in class, from decisions of appointing authorities when such decisions relate to demotions, lay offs, suspensions, discharges or reductions in pay but only when it is alleged that such decision was not based on just cause.

This appeal clearly does not come within the scope of the above cited section. Although Appellant alleges he was demoted, he was not. A demotion is defined as "the movement of an employe with permanent status in one class to a position in another class that has a lower rate or pay range maximum." (Section Pers. 17.01, W.A.C.) Appellant did not move to a different position nor did the pay range maximum of his classification become lower, in fact, it was raised.

Section 16.05(1)(f) states in relevant part that the Board shall:

Hear appeals of interested parties and of appointing authorities from actions and decisions of the director.

The compensation plan is prepared pursuant to Section 16.086, Wis. Stats.

The director of the Bureau of Personnel proposes changes to the compensation plan each biennium. This proposal is submitted to this Board for its advice and counsel. After receiving such from the Board, the director submits the proposal to the Joint Committee on Employment Relations (JOCER). Section 16.086(3)(b) states then in part:

The proposal, as may be modified by the joint committee on employment relations together with the unchanged provisions of the current compensation plan shall for the ensuing fiscal year or until a new or modified plan is adopted pursuant to this subsection, constitute the state's compensation plan for positions in the classified service. Any modification of the director's proposed changes in the compensation plan by the joint committee on employment relations may be disapproved by the governor within 10 calendar days. A vote of 6 members of the joint committee on employment relations is required to set aside any such disapproval by the governor.

The above section clearly refers to the input by the Director as a proposal which not only must be approved but is subject to possible modification by JOCER. In Holmblad v. Hart, Case No. 76-229, (February 23, 1977), we held that we had no jurisdiction to hear appeals under either Section 16.05(1)(f) or (7), Wis. Stats. from actions of the Director of the Bureau of Personnel "associated with his proposals regarding the compensation plan." (76-229, at page 2) In reaching that conclusion we stated:

"In Section 16.086 the legislature has provided a rather unique process that involves the Director, the Personnel Board, the joint committee on employment relations, and the Governor. There are specific roles for each with a potential for functional input by the Director, the committee, and the Governor. The committee can modify the Director's proposals subject to what amounts to a veto by the Governor, subject in turn to being overridden by the committee. The Board's role is limited to providing advice and counsel to the Director. It would be totally incongruous and at odds with the evident legislative intent if the Personnel Board had a plenary review power over the entire pay plan once it had been approved through the operation of the Section 16.086 procedure. . . .

Changes in the Director's proposals may be made by the joint committee subject to a veto power exercisable by the Governor. Once approved, ' . . . the proposal . . . shall for the ensuing fiscal year or until a new or modified plan is adopted pursuant to this subsection, constitute the state's compensations plan . . . .' Section 16.086(3)(b), stats. This is a legislatively mandated process in which the legislature's joint committee on employment relations plays a functional role. It appears that changes in the plan require resort to this process. The Personnel Board, however, does not have the jurisdiction to pass judgment on the plan." (76-229, pages 2-4)

Therefore, we conclude that we lack the authority to hear this appeal under Section 16.05(1)(f).

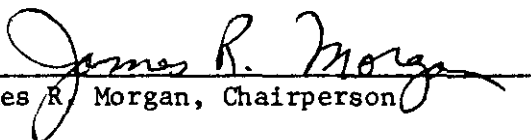
In addition, we conclude that we do not have jurisdiction under Section 16.05(1)(g) or (1)(h). This appeal is not perfected pursuant to the county merit system rules under Section 49.50, or from a decision of an impartial hearing officer under Section 111.91(3).

Because of the above conclusions on jurisdiction we find we do not need to and will not reach the timeliness issue.

ORDER

IT IS HEREBY ORDERED that this appeal is dismissed.

Dated 11-15, 1977 STATE PERSONNEL BOARD

  
James R. Morgan, Chairperson