STATE PERSONNEL BOARD

STATE OF WISCONSIN

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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 grievance. The respondent has moved to dismiss for lack of subject matter jurisdiction on the ground that the subject matter of the grievance is covered by a collective bargaining agreement and that any remedy would be under the contractual grievance procedure. The Board has reviewed the entire file in this matter.

FINDINGS OF FACT

- 1. The appellant filed a grievance with respondent which alleged that he began employment as a Therapist 2 at the Winnebago Mental Health Institute on May 31, 1977, and sustained an injury on the job on July 5, 1977, which lead, due to his then probationary status to 2 days of leave without pay during which he also did not earn vacation or sick leave time.
- 2. This grievance was denied except that because of the non-recrimination clause the appellant was given vacation and sick leave credits for the 2 days in question, which fell within the WSEU strike.

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- 3. The appellant filed an appeal with the Board of the denial of his grievance at the third step.
- 4. At this stage of the procedure the only relief sought by appellant is the salary for the 2 days he was unable to work due to the aforementioned injury.
- 5. The appellant's position during the period in question was covered by a contract between the state and the WSEU which included the accural and use of sick leave, vacations and holidays.
 - 6. Said contract also provides, Art. IV, subsection 4:

"The grievance procedure set out above shall be exclusive and shall replace any other grievance procedure for adjustment of any disputes arising from the application and interpretation of this agreement."

CONCLUSIONS OF LAW

1. The Personnel Board lacks jurisdiction over the subject matter of this appeal.

OPINION

Section 111.93(3), Wisconsin statutes, provides:

"If a labor agreement exists between the state and a union representing a certified or recognized bargaining unit, the provisions of such agreement shall supersede provisions of civil service and other applicable statutes related to wages, hours and conditions of employment whether or not the matters contained in such statutes are set forth in such labor agreement."

In Olbrantz v. Earl, Wis. Pers. Bd. No. 75-9 (3/25/75), the question concerned an appeal of a layoff but the principle is the same as is present here as the Board cited the same statutory subsection:

"... the legislature intended that grievances such as the instant one be determined under the grievance provisions of the contract and that the civil service laws not be invoked to interfere with that process."

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ORDER

This	appea	l is	dismissed	for	lack	of	subject	mat	tter	jurisc	lictio	n.
Dated	1: _ <i>E</i>	pril	. 11		, 19	978	STA	ATE	PERS	SONNEL	BOARD)

James R. Morgan, Chairperson