

STATE OF WISCONSIN

STATE PERSONNEL BOARD

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MARVIN HEBEL,

Appellant,

v.

SECRETARY, Department of Health
and Social Services,

Respondent.

Case No. 77-227

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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 pursuant to Article X of the WSEU contract (hearing officer procedure). The respondent took the position that the Board's jurisdiction is pre-empted by s. 111.93(3), Stats. The Board has reviewed the entire file.

FINDINGS OF FACT

1. The appellant's grievance contained in part the following language:

" . . . Robert Hillestead is doing Maintenance Mechanic III work . . . but is not classified as such.

Relief Sought

Reclassify Robert Hillestead as a Maintenance Mechanic III or hire a Maintenance Mechanic III to fill that position . . . which was vacated by retirement."

2. The appeal to the Board contained the following language: "I am appealing to the Personnel Board a third step grievance according to Article X and answer dated December 7, 1977."

3. At all relevant times the appellant's position has been subject to a collective bargaining agreement between the State of Wisconsin and the Wisconsin State Employees Union.

CONCLUSIONS OF LAW

1. Pursuant to s. 111.93(3), Stats., the contract supersedes statutory provisions relating to wages, hours, and conditions of employment.

2. The subject matter of this appeal does not fall within the matters subject to the hearing officer provision of s. 111.91(3), Stats., and Article X of the contract.

OPINION

Section 111.93(3), Stats., 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 such 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."

The presence of a contract removes or pre-empts, for the most part, the Personnel Board's authority to hear appeals alleging violations of the civil service law, subchapter II of chapter 16. Section 111.91(3), Stats., provides a limited exception to this general rule. This subsection permits the parties to a contract to reach agreement for a limited hearing before a hearing examiner, subject to limited review by the Board, with respect to actions taken by the employer relating to:

"1. Original appointments and promotions specifically including recruitment, examinations, certifications, appointments and policies with respect to probationary periods.

2. The job evaluation system specifically including positions classification, position qualification standards, establishment and abolition of classifications, assignment and reassignment of classifications to salary ranges, and allocation and reallocation of positions to classifications, and the determination of an incumbent's status resulting from position reallocations."


In Rich v. Carballo, Wis. Pers. Bd. No. 75-10 (6/13/77), it was held that the assignment of duties to positions, allegedly outside the realm of the class specifications for those positions, did not fall within the enumeration of matters set forth as subject to the hearing officer procedure contained in Article X and s. 111.91(3). The rationale of that case compels a similar result here.

ORDER

This appeal is dismissed for lack of jurisdiction over the subject matter.

Dated: May 18, 1978

STATE PERSONNEL BOARD


James R. Morgan, Chairperson