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 *
 WILLIAM RAY,
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 Appellant,
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 v.
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 UNIVERSITY OF WISCONSIN,
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 Respondent.
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 Case No. 78-129-PC
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INTERIM
DECISION

The respondent has objected to consideration of the merits of this appeal by the commission on two grounds. First, that the personnel board's decision on its investigation in a related case, Gray Request for Investigation, Wis. Pers. Bd. 78-38-I (6/16/78) is conclusive. Second, that the matter cannot be appealed to the commission but should have been refiled non-contractually.

The respondent makes the following argument:

"The Gray investigation decision was based upon a consideration by the Board of the same facts and issues presented in the William Ray case. In fact, an examination of the grievances submitted by both Mr. Ray and Mr. Gray reveals that each man - submitted Grievance Report--Step 1 on 3/20/78, Grievance Report--Step 2 on 4/4/78, and Grievance Report--Step 3 on 6/5/78. Further examination of each grievance reveals that the complaints of both men are based upon the same factual situation, and raise the same issues with regard to the facts. Despite the fact that the grievances were submitted at the same time, the Gray case was the first to be considered by the Board. In its "Opinion and Order" the Board stated:

'Mr. Gray has complained about the fact that a supervisor was working in another, non-supervisory position. The U.W. -- LaCrosse stated that an Assistant Supervisor position was created in their power plant and this position was filled by promotion of a Plant Operator. During the period of recruitment for the Power Plant Operator position the newly promoted Assistant Supervisor performed operating duties. It is not the University's intent to have the Assistant Supervisor fire the boilers on a regular basis. Both parties noted that

grievances are being reviewed. In the Board's opinion, there is no need for further investigation.'

Based on this decision, and the fact that both Gray's and Ray's grievances were based on this same factual situation, further consideration of these facts in the Ray case is not in order." (letter to commission dated 12/21/78)

Since Mr. Ray was not a party to the Gray investigation, he could not be bound by the results of that proceeding. Before a party can be bound by the results of another proceeding by principles of res judicata or collateral estoppel there has to be an identity of parties, which there is not.

A second requirement is that there be an identity of claims or causes of action. The Gray case was handled as a request for investigation under §16.05(4), Stats. (1975), which conferred discretionary authority on the personnel board to investigate matters relating to the civil service. This appeal requests the appointment of a hearing examiner pursuant to Article X of the WSEU contract. This is an attempt to invoke the jurisdiction of the commission pursuant to §§230.45(1)(f), and 111.91(3), Stats. (1977). There is no identity of claims.

Finally, the June 16, 1978, decision simply outlined the response received by the U.W. - LaCrosse and stated there was no need for further investigation. There were no conclusions made as to whether the actions complained of improper or illegal. The decision whether to investigate was discretionary with the board under §16.05(4), and the limited nature of this decision cannot have any binding effect on the commission.

The respondent makes the following argument as to the second objection:

"Respondent also wishes to reassert its objection to the Board's consideration of this case on the grounds that the appellant cannot appeal directly to the Commission from the

third step denial of a contractual grievance as was done here. The grievance should have been refiled non-contractually within 10 days of the third step decision pursuant to APM, Personnel, Administration, non-contractual employee grievance procedures, effective August 24, 1966, revised October 1, 1974.

The APM provides in part:

"If a grievance filed under a contractual grievance procedure is determined to be non-arbitable because it involves a nonbargainable subject the grievance may be filed under this grievance procedure" Para. I.D.I.K. (emphasis supplied).

Section 111.91(3), Stats., provides in part:

"The employee may bargain and reach agreement with a union ... to provide for an impartial hearing officer to hear appeals on differences arising under actions taken by the employer under sub (2)(b) 1 and 2 ... the decision shall be reviewed by the personnel commission under §230.45(1)(f)...."

Article X, paragraph 148, of the agreement between the State of Wisconsin and AFSCME, Council 24, WSEU, AFL-CIO (Blue Collar, Non-Building Trades, Health & Safety, and Technical) September 11, 1977 - June 30, 1979), provides in part:

"The personnel board may at its discretion appoint an impartial hearing officer to hear appeals from actions taken by the employer under Section 111.91(2)(b) 1 and 2 Wis. Stats."

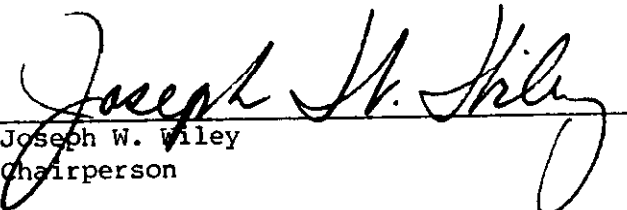
In the opinion of the commission there is nothing in these provisions that would have required that this matter have been filed as a noncontractual grievance as opposed to having been appealed to the commission for the appointment for a hearing officer.

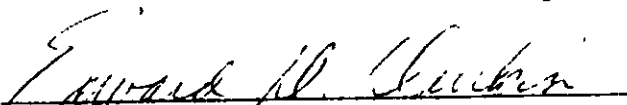
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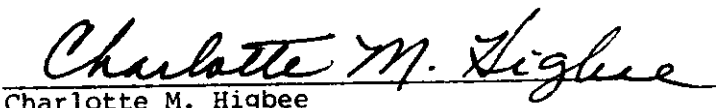
The respondent's objections are overruled. Anthony J. Theodore of the commission staff is appointed as hearing officer pursuant to Art. X of the WSEU, Council 24 contract and §111.91(3), Stats.

Dated: March 1, 1979.

STATE PERSONNEL COMMISSION


Joseph W. Wiley
Chairperson


Edward D. Durkin
Commissioner


Charlotte M. Higbee
Commissioner

AJT:jmg

3/2/79

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