

civil service code does not contain any provisions as to who may appeal under s. 230.44(1)(a) and (b). Therefore the Commission must look to the provisions of the Administrative Procedure Act, Chapter 227, Stats.

Section 227.01(6) Stats., provides in part that: "Any person whose substantial interests may be adversely affected by any proposed agency action in a contested case shall be admitted as a party."

The Personnel Board, predecessor agency to the Commission, ruled in Hoeft v. Carballo, No. 74-37 (5/24/76), that a president of a union local had standing to appeal a non-contractual grievance on behalf of union members. In Sielaff v. Div. Personnel, No. 78-2-PC (11/22/79), the Personnel Commission upheld the standing under s.227.01(6), Stats., of a division administrator to appeal the denial of a reclassification request regarding a position in the division:

"In the Commission's opinion his 'substantial interests' are affected by the classifications of positions in his agency. These classifications have a bearing on the morale and efficiency of the incumbents and the ability to recruit high quality replacements in the case of vacancies, to mention just a few factors."

For somewhat similar reasons, the union or the union's representative's advise interests "are affected by a personnel decision diminishing the union members' choices for successfully competing for a promotion.

Jurisdiction Over Agreement

In his brief, the appellant's representative states:

"I have researched the issue of a local agreement and have found that no such written agreement exists. The agreement was made verbally between Dr. Connors of the university and Ed Gang for local 1131, WSEU. The agreement was that all jobs should and would be filled by people that worked on campus if possible. This verbal agreement goes back many years."

The state is prohibited from bargaining on, among other things:

"Original appointments and promotions specifically including recruitment, examination, certification, appointments, and policies with respect to probationary periods." s.111.91(2)(b)1, Stats.

Even if the subject of this agreement were not a prohibited subject of bargaining, the Commission's jurisdiction would be usurped by the provisions of s.111.93(3), Stats:

"If a labor agreement exists between the state and a union representing 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 relating to wages, hours and conditions of employment whether or not the matters contained in such statutes are set forth in such labor agreement."

While the Commission undoubtedly has a form of jurisdiction over agreements reached between the employe and employer which are designed to resolve appeals pending before the Commission, the agreement here in question certainly does not fit into that category.

ORDER

The respondents' objection to the appellant's standing is overruled. The respondents' objection to the Commission's jurisdiction over any agreement between local 1131 and the university is sustained and that subject matter will not be considered by the Commission.

Dated Dec. 13, 1979

STATE PERSONNEL COMMISSION


Charlotte M. Higbee
Commissioner