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DONALD L. SNYDER,

Grievant,

v.

WILBUR J. SCHMIDT, Secretary,
Department of Health & Social Services,
and

C. K. WETTENGEL, Director,
State Bureau of Personnel,

Respondents.

Case No. 74-119

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HARRY EMERSON,

Grievant,

v.

WILBUR J. SCHMIDT, Secretary,
Department of Health & Social Services,
and

C. K. WETTENGEL, Director,
State Bureau of Personnel,

Respondent.

Case No. 74-121

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Before JULIAN, Chairman, STEININGER and SERPE.

OFFICIAL

OPINION

AND

ORDER

OPINION

The grievants, Donald L. Snyder and Harry Emerson, representing themselves and several of their colleagues similarly circumstanced, have appealed to the Board from the third-step denial of their grievance by Respondent Schmidt. Grievant Snyder is classified as a Vocational Rehabilitation Specialist 3 while Grievant Emerson is classified as a Vocational Rehabilitation Specialist 1, and both are employed by the Division of Vocational Rehabilitation of the State Department of Health and Social Services. Both grievants were placed in the social services bargaining unit by the

Wisconsin Employment Relations Commission (WERC) pursuant to Sec. 111.81(3)(b), Wis. Stats., and it was this action which gave rise to the instant appeals.

The grievants each contend that he performs functions essentially managerial or supervisory in nature and that his placement in the social services bargaining unit was clearly erroneous. Grievant Snyder therefore asked the WERC to, in effect, clarify the bargaining unit so as to exclude his position from it, but on February 7, 1975, Mr. Morris Slavney, Chairman of WERC, responded by saying that the WERC would not entertain such requests for clarification from individual employees. Mr. Slavney stated that "[t]he Commission only entertains such petitions for clarification of bargaining unit where the petition is filed by the State as the employer or [by] the labor organization certified to represent the employes." Otherwise, said Mr. Slavney, "we would anticipate that our agency would be literally swamped by such petitions from individuals who, for some reason or other, would desire to be included or excluded from the appropriate bargaining unit." See In the Matter of the Petition of John L. Lerch, Case XLVII, Decision No. 12682 (WERC, May 8, 1974).

Sec. 111.81(3)(am), Stats., provides in material part as follows:

"[A]fter July 1, 1974, the employer or employe organizations may petition the commission for the establishment of additional or modified statewide units." (Emphasis added.)

The above-quoted section clearly sets out that jurisdiction for entertaining petitions for clarified bargaining units (therein termed "modified" bargaining units) resides in the Commission. Nowhere in the statutes is such power conferred on this Board, and it would be anomalous, to say the least, if it were. The fact that Sec. 111.81(3)(am), Stats., does not seem to contemplate the commission entertaining petitions filed by individual employes -- a policy articulated by Mr. Slavney in his letter of February 7, 1975 -- does not confer jurisdiction on this Board to consider such petitions. Our jurisdiction is derived from what the Legislature did say, not what it did not.

We conclude that we are without jurisdiction to adjudicate the instant controversy, and the appeals should therefore be dismissed.

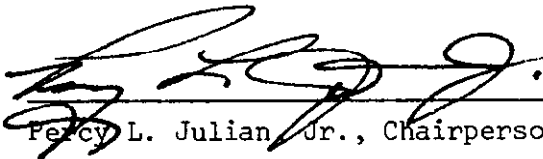
ORDER

IT IS THEREFORE ORDERED that the cases are dismissed.

Dated March 24, 1975

STATE PERSONNEL BOARD

By



Percy L. Julian, Jr., Chairperson

¹ At the prehearing conference held on March 7, 1975, the grievants herein indicated their unhappiness with their current classifications. Since neither grievant has yet filed a request for reclassification with their personnel office, whether they are properly classified -- as distinguished from our jurisdiction to consider their appropriate bargaining unit -- is not now before us. Nothing we say herein should be taken as indicative of our views on the issue of the grievants' proper classifications, should that issue ultimately come before us.