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 GEORGE E. WALKER,  
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 Appellant,  
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 v.  
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 MANUEL CARBALLO, Secretary,  
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 Dept. of Health and Social Services,  
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 Respondent.  
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 Case No. 75-121  
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**OFFICIAL** OPINION AND ORDER

Before: DEWITT, Chairperson, HESSERT, MORGAN, and WARREN, Board Members,

NATURE OF THE CASE

This is an appeal of a dismissal from employment pursuant to Section 16.05(1)(e), stats. At a prehearing conference held December 17, 1975, the respondent raised an objection to the subject matter jurisdiction of the personnel board on the grounds that pursuant to the provision of the collective bargaining agreement applicable to the appellant, the exclusive appeal route of a termination was through the contractual grievance procedure. It was agreed to hold this appeal in abeyance while the appellant consulted with his representatives in a pending contractual grievance proceeding before determining his position with regard to personnel board jurisdiction. By letter dated March 29, 1976, the appellant stated that the union matter remained open and that "as per out last meeting it was concluded that prior to a follow up with board action the union situation should be resolved." After further correspondence the appellant indicated that he wished to proceed with this appeal and respondent filed a written motion to dismiss for lack of subject matter jurisdiction accompanied by an affidavit of counsel. The appellant also has filed an affidavit of counsel in opposition to the motion. The findings that follow are based on undisputed matter appearing in these affidavits.

FINDINGS OF FACT

The appellant was employed by the respondent and on or about September 3, 1974, attained permanent status in class pursuant to Section Pers 13.11, W.A.C., by completing a six month probationary period. The appellant's employment subsequently was terminated effective October 3, 1975. At that time the appellant was a member of the Professional Social Services and Research Bargaining Unit, American Federation of State, County and Municipal Employes, Council 24, Wisconsin State Employees Union, AFL-CIO, which was party to a collective bargaining agreement with the State of Wisconsin effective September 14, 1975 - June 30, 1977. Article IV, Sec. 9 of that agreement provides that an employe's appeal of his termination from employment must be taken through the contract grievance procedure as set forth in Article IV.

CONCLUSIONS OF LAW

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 relating to wages, hours and conditions of employment whether or not the matters contained in such statutes are set forth in such labor agreement."

Because of the existence of the contract, this statute requires the conclusion that the provisions of the contract cited in the findings supersede the personnel board appeal provisions provided in Section 16.05(1)(e), stats., with respect to the discharge of an employe with permanent status in class such as the appellant. Therefore, there is no jurisdiction under Section 16.05(1)(e), and we have been unable to perceive any other basis for jurisdiction.

The appellant argues that Section 111.83, stats., affords "the right to appeal his termination directly to his employer." He cites the following statutory language:

"Any individual employe, or any minority group of employes in any collective bargaining unit, may present grievances to the state employer in person, or through representatives of their own choosing, and the state employer shall confer with said employe in relation thereto if the majority representative has been afforded the opportunity to be present at the conference."

We conclude that the personnel board is not the "employer" in the sense used in this provision and we further conclude that this provision does not in any manner confer subject matter jurisdiction over this appeal on this board.

The appellant also cites provisions of the National Labor Relations Act and various court decisions relating to the rights of employes to present grievances to their employer independently of the union. To the extent that these authorities might apply to this termination, they at most would stand for the proposition that the appellant would be entitled to pursue independently his contractual grievance to its conclusion regardless of what position the union might take on it. We conclude that these authorities have no bearing on this board's jurisdiction over this appeal.

ORDER

Respondent's motion to dismiss for lack of subject matter jurisdiction is granted and this appeal is dismissed.

Dated April 25, 1977.

STATE PERSONNEL BOARD

  
Laurene DeWitt, Chairperson