

* * * * *

DOUGLAS J. GOULD,

Appellant,

v.

MANUEL CARBALLO, Secretary,
Dept. of Health & Social Services,

Respondent.

Case No. 75-63

* * * * *

OPINION AND ORDER

OFFICIAL

Before: JULIAN, Chairperson, STEININGER and WILSON, Board Members.

OPINION

I. Facts

Appellant was a permanent employee who worked at the Lincoln Boys School and whose position was classified as Youth Counselor 2. By letter dated May 6, 1975 Appellant was terminated from employment effective the same date. The last paragraph of the termination letter read in part:

If you believe this discharge action was not taken for just cause, you may, pursuant to the provisions of the Wisconsin State Employees Union Contract, appeal this discharge by beginning with the third step of the grievance procedure.

By letter dated May 11, 1975 Appellant appealed from the termination action to this Board. His appeal letter was received May 13, 1975.

On February 6, 1976 Respondent moved for this appeal to be dismissed for lack of jurisdiction based on Appellant's position being part of a collective bargaining unit. Respondent subsequently provided in support of his motion Form LBS 200, a business record maintained by the Personnel Office at the Lincoln Boys School, which listed the personnel actions effecting Appellant during the period of his employment. This

document showed that Appellant's position was reclassified on September 3, 1972 to Youth Counselor 2.

II. Conclusions

Jurisdiction

The Agreement between AFSCME Council 24 Wisconsin State Employees Union, AFL-CIO and State of Wisconsin (hereinafter called the Agreement) which was in effect at the time of Appellant's termination listed the classification of his position, Youth Counselor 2, in the Security and Public Safety collective bargaining unit. The Agreement provided in Article IV, Section 10 that an employee who alleges that his discharge was not based on just cause may appeal that action, beginning with the third step of the contract grievance procedure. Appellant was notified that this was the proper procedure to follow in the last paragraph of his termination letter which is quoted above. The Agreement further provided in Article IV, Section 6 that:

The grievance procedure set out above shall be exclusive and shall replace any other grievance procedure for adjustment of any disputes arising from the application and interpretation of this Agreement.

Therefore, we conclude that Appellant's sole remedy for the appeal from his discharge was through the grievance procedure under the Agreement and that we have no jurisdiction to hear this appeal. Under Section 16.28(1)(a) Wis. Stats., the legislature emphasized that this is the correct interpretation of the effect of the Agreement when it provided:

An employee with permanent status in class may be removed, suspended without pay, discharged, or reduced in pay or position only for just cause. This paragraph shall apply to all employees with permanent status in class in the classified service, except that for employees in a certified bargaining unit covered by a collective bargaining agreement, the determination of just cause and all aspects of the appeal

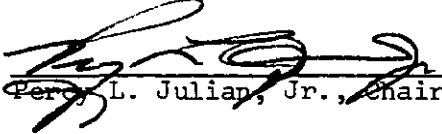
procedure shall be governed by the provisions of the negotiated agreement. (Emphasis added.) (See also Section 111.93, Wis. Stats.)

ORDER

IT IS HEREBY ORDERED that Respondent's motion to dismiss is granted.

Dated August 23, 1976.

STATE PERSONNEL BOARD



Percy L. Julian, Jr., Chairperson