

The Board noted in the November 26, 1975, Interim Order (p. 4) that the termination and/or extension of the agreement were/was of central importance in deciding whether or not the Board had jurisdiction over the issue presented in the appeal. An evidentiary hearing was held on the question of the agreement's status. Based upon the evidence presented at that hearing, we make the following findings of fact regarding the agreement:

The WSAA and the State of Wisconsin first entered into the agreement effective July 8, 1973. The agreement was ratified by the membership, enacted as law by the legislature, and approved by the Governor. By its own terms, the agreement would automatically terminate "at 12:00 midnight on the 30th day of June, 1975" (Agreement Art. XII, §1). The agreement contained no provision relating to its extension pending negotiation of a new agreement after its termination, although other contracts negotiated in the same time period between the State and various bargaining units had specific clauses providing that the agreement could be extended if a new agreement was not reached prior to the expiration of the old agreement. Such a provision was specifically deleted from the WSAA - State agreement.

By June 30, 1975, no new agreement had been negotiated, although contract negotiations were taking place after that date.

At some point in the negotiations, after June 30, 1975, Mr. Sverre Tinglum, spokesperson for the WSAA and Mr. Peter Vallone, a spokesperson for the State discussed the possible extension of the 1973-1975 agreement pending negotiations on a new agreement. The discussions were general in nature, and not recorded or transcribed. Some time later, in late July or early August, Messrs Tinglum and Vallone executed a document dated and effective July 8, 1975, purporting to extend the 1973-75 agreement for an indefinite period.

This document was neither disseminated nor announced to the WSAA until several months after its execution. It was never ratified by the WSAA, nor was it enacted as legislation nor approved by the Governor.

This appeal of an alleged demotion was filed with the Board on July 10, 1975.

CONCLUSIONS OF LAW

The Board's jurisdiction in this case is dependent on the question of whether or not the collective bargaining agreement was extended at the time of the appeal.

If the agreement was extended past June 30, 1975, and was in effect on July 10, 1975, then the Board lacks jurisdiction. The agreement specifically provides that demotions are to be appealed through the grievance procedure (Agreement, Art. IV, §6). In Olbrantz v. Earl, St. Pers. Bd. Case No. 75-9, 3/25/75, the Board held that where an action was identified as grievable in a collective bargaining agreement, the grievance procedure became the sole remedy for the employe and that the Board lacked subject matter jurisdiction over any issue which was, or could be, the subject of the bargained grievance procedure.

Thus, if the agreement here in question was in effect at the time of the appeal, the Board lacks jurisdiction over the allegations.

If, however, the agreement had terminated by the time of the alleged demotion because grievable, then appellant was not covered by any collective bargaining agreement, and this appeal would be subject to the applicable statutes and regulations governing appeals of demotions for non-represented employes.

Section 16.28(1), Stats., provides that an employe may be demoted only for just cause, and sec. 16.05(1)(e) vests this Board with jurisdiction to

hear appeals of employes alleging demotion not based on just cause.

Upon the evidence presented thus far in this case, the Board concludes that the collective bargaining agreement between the WSAA and the State was terminated at 12:00 midnight on June 30, 1975, and was not lawfully extended beyond that time.

The agreement which was ratified by the WSAA, and enacted into law by the legislature and Governor contained no provision or authority for its extension. The parties to the agreement did not intend for the agreement to be extendable. This is manifest through the conscious and deliberate deletion of an extension clause which was included in the majority of agreements effective over the same time period as the agreement involved here. In light of the affirmative deletion of an extension clause in the original contract, and in the absence of some authority for the extension, the document later executed by Messrs Vallone and Tinglum was ineffective in the context of the issue here presented.

For these reasons, it is concluded that there was no collective bargaining agreement in effect at the time this appeal was filed and that the Board has subject matter jurisdiction over this appeal.

ORDER

The Respondents' motion to dismiss is denied.

Dated: 10-12, 1977. STATE PERSONNEL BOARD


James Morgan, Chairperson