

* * * * *
 *
 MARY FRANCE, *
 *
 Appellant, *
 *
 v. *
 JOHN C. WEAVER, President, *
 University of Wisconsin System, *
 *
 Respondent. *
 *
 Case No. 76-164 *
 *
 * * * * *

INTERIM
 OPINION
 AND
 ORDER
OFFICIAL

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

This is a group grievance filed pursuant to Section 16.05(7), stats. Following an investigation and report by the director and further appeal by the grievants, the respondent filed a motion to dismiss for lack of standing as to all the members of the group except Ms. Toigo, Monson, Dunbar, and Barker. The respondent argues that the other appellants did not apply to transfer to the position in question and thus did not suffer any injury by the manner in which the appointment was made. The appellants responded that they suffered substantial injury because an unfair or improper selection process serves to intimidate employes and prevents them from making application for jobs for which they are eligible because they believe the decisions have been made prior to the selection process.

Precedent for the resolution of this issue may be found in Strickland v. Carballo, Wis. Pers. Bd. No 75-132, 228 (2/23/76), where the appellant challenged the training and experience requirements for certain positions. The agencies raised a standing question premised on the fact that the appellant had been admitted to the examinations in question following a re-review of her credentials after an initial denial. The appellant alleged that the agencies admitted her

to the examinations solely in an attempt to moot her appeals and that she did not in fact possess the requisite training and experience. She further alleged that the examination would utilize the allegedly improper training and experience and that she would be prejudiced in her competition in the examination.

In deciding this issue the board cited Wisconsin's Environmental Decade, Inc. v. Public Service Commission, 69 Wis 2d 1, 13-14, 230 N.W. 2d 243 (1975):

The first question to be determined on this analysis of WED's standing in the instant case is whether the petition alleges injuries that are a direct result of the agency action.

The petition, as amended, alleges that the order in question causes harm: (a) By prematurely devouring natural gas reserves preventing future availability, and (b) by inducing lower priority customers to rely on more environmentally damaging sources of fuel. The respondents contend these alleged injuries are speculative and remote and cannot be construed as being directly caused by the order in question. On the other hand WED contends that "directly affected," as used in s. 227.16(1), Stats., includes injuries that are brought about because of a series of events initiated by the agency action in question and that the injuries alleged here qualify. We agree.

This court and the federal courts have taken a similar view of the directness requirement. Injury alleged, which is remote in time or which will only occur as an end result of a sequence of events set in motion by the agency action challenged, can be a sufficiently direct result of the agency's decision to serve as a basis for standing. The question of whether the injury alleged will result from the agency action in fact is a question to be determined on the merits, not on a motion to dismiss for lack of standing.

In this case the situation is quite similar inasmuch as although the injury alleged does appear to be somewhat remote, "the question of whether the injury alleged will result from the agency action is a question to be determined on the merits, not on a motion to dismiss for lack of standing." Further, the administrative procedure act has been amended since the WED decision to broaden the concept of standing. See the Judicial Council note, sec. 5, accompanying AB 163: "In adopting the broad definitions of 'party' and 'person aggrieved' and in the modifications to ss. 227.15 and 227.16, the draftsmen are seeking to broaden the concept of standing."

A question also has been raised concerning the attendance of the members of the group at the pre-hearing conference and the hearing. These proceedings are open to the public and anyone may attend. However, in a group grievance such as this involving 31 employes it is appropriate to designate one employe as the representative or spokesperson. The other grievants do not have an absolute right to be present at all proceedings on state time.

ORDER

It is ordered that the motion to dismiss for lack of standing is denied.

Dated June 13, 1977.

STATE PERSONNEL BOARD


Laurene DeWitt, Chairperson