

STATE OF WISCONSIN

STATE PERSONNEL BOARD

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MARTIN BEIL,

Appellant,

v.

SECRETARY, Department of Health
and Social Services,

Respondent.

Case No. 77-116

* * * * *

OFFICIAL

SECOND
OPINION AND ORDER

Before: James R. Morgan, Calvin Hessert and Dana Warren, Board Members.

NATURE OF THE CASE

This is an appeal of a grievance pursuant to § 16.05(7), Stats. At the first prehearing conference held in this matter the appellant moved to dismiss on standing grounds and on the grounds that the subject matter of the appeal was not grievable and also was moot. In an Interim Opinion and Order entered November 15, 1977, the Board held that subject matter jurisdiction was present, the named appellant had standing, and that the appeal was not moot. The Board entered the following order:

"The objections to this appeal are overruled. Within 30 days of the entry of this order the union is directed to file and serve a statement identifying by name one or more of the six affected employes mentioned in the grievance who are ready, willing and able to pursue this appeal, or serve and file a statement showing cause why this appeal should be dismissed."

Appellant filed a response to this order which prompted further objections from the respondent. At a second prehearing conference the respondent moved to dismiss the appeal on the following grounds:

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- "1. Appellant has failed to comply with the Personnel Board order in this case dated November 15, 1977; and
2. The board lacks subject matter jurisdiction under Rich v. DHSS, Wis. Pers. Bd. No. 75-10 (6/13/77)."

The parties have filed briefs on these points.

FINDINGS OF FACT

The Personnel Board incorporates by reference the Findings of Fact set forth in the Interim Opinion and Order dated November 15, 1977. The appellant's response to the order was contained in a letter from Attorney Graylow dated December 9, 1977:

" . . . Local 2748 of the WSEU, whose President is Martin Beil, will pursue this matter as a union grievance. I direct your attention to Kaukl v. Earl, Pers. Bd. Case No. 74-127 (2/76), wherein the same procedure was followed.

You are further advised that the Union will be asking for prospective relief only in the nature of a rule declaring the assignment of duties and responsibilities by the Department to be unlawful and illegal."

CONCLUSIONS OF LAW

1. The December 8, 1977, letter from respondent's counsel constituted compliance with the Board's order of November 15, 1977.
2. Pursuant to §§ 111.93(3) and 111.91(3), Stats., the Board lacks jurisdiction over this appeal.

OPINION

Proceedings before the Board are not governed by any strict rules of pleading and in the Board's opinion the December 9, 1977, letter for the appellant's attorney

complied in form with the November 15, 1977, Board order. The question of whether it showed adequate cause why the appeal should not be dismissed relates to some extent to the question concerning subject matter jurisdiction raised by the respondent.

The respondent in its brief on this subject argues that the assignment of duties is a management right which is subject to bargaining and that Art. III, p. 12, of the contract encompasses the assignment of rights by the recitation that management rights include the right "to utilize personnel . . . in the most appropriate and efficient manner possible." The respondent argues that while pursuant to § 111.91(1)(a), management is not required to bargain on the management rights listed in § 111.90, including the right to utilize personnel, methods, and means in the most appropriate and efficient manner possible, management is not prohibited from bargaining on this subject by § 111.91(2), which lists the subjects on which bargaining is prohibited. It is further argued that:

"Since an agreement on the issue of management rights was reached in the contract, § 111.93(3), Wis. Stats., applied and 'the provisions of such agreement . . . supersede . . . provisions of civil service and other applicable statutes related to wages, hours, and conditions of employment.' As noted in Olbrantz v. Earl, 75-9, grievances on issues are 'intended . . . [to] be determined under the grievance provisions of the contract and that civil service laws not be invoked to interfere with that process.' The respondent therefore moves to dismiss this appeal under § 16.05(7), Wis. Stats., since a decision to hear the case would violate a legislative intent that such civil service procedures and remedies not interfere with the contract grievance process."

While the appellant is seeking relief "in the nature of a rule declaring the assignment of duties and responsibilities by the Department to be unlawful and illegal," see letter of December 9, 1977, any question of illegality under the civil service statutes and rules would be superseded by the contract pursuant

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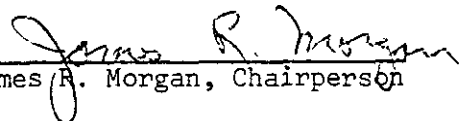
to § 111.93(3), Stats. This jurisdictional problem cannot be cured by interpreting this appeal as a request for a hearing officer pursuant to § 111.91(3), Stats., as the Board has held that a question as to the assignment of duties does not fall within the enumeration of matters contained in § 111.91(3), Stats. See Rich v. Carballo, Wis. Pers. Bd. No. 75-10 (6/13/77).

ORDER

This appeal is dismissed for lack of subject matter jurisdiction.

Dated: May 18, 1978

STATE PERSONNEL BOARD


James R. Morgan, Chairperson