

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

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INTERIM OPINION AND ORDER

**OFFICIAL**

Before: Morgan, Hessert and Warren, Board members.

NATURE OF THE CASE

This is an appeal pursuant to s. 16.05(7), Stats., of a denial of a grievance at the third step. At the prehearing conference the respondent raised a number of objections to the personnel board's jurisdiction over this appeal and by way of affirmative defense as follows:

"Respondent moved to dismiss for lack of jurisdiction on the grounds that since the grievance was pursued only for Susan Woods the board has no jurisdiction over any other persons, and that Susan Woods has disavowed any knowledge of the grievance at the time it was filed and does not wish to be a party to this grievance.

"Respondent also took the position that the subject matter of this appeal is not grievable and that it is moot." Conference report dated August 19, 1977.

The parties through counsel have filed briefs on the issues raised by these objections. The following findings are based on matter which appears uncontested on the record to date and is limited to this interim decision. The board has reviewed the entire record in this matter.

FINDINGS OF FACT

This grievance was filed by the appellant, president of local 2748, WSEU, under the unilateral grievance procedure. The grievance was as follows:

"It has come to this union's attention that at least seven (7) members of the represented bargaining unit are engaged in administrative hearings for A.F.D.C. appeals, in the Division of Family Services. This particular job assignment, duties and responsibilities are normally performed by an attorney licensed to practice law in the state of Wisconsin. None of the affected employes are attorneys nor do they receive commensurate salary with that of an attorney. It is this union's opinion that these new job assignments, duties or responsibilities are not within the scope or job descriptions of these employes. This grievance is being filed on behalf of these employes and all employes similarly situated in the state of Wisconsin."

The "relief sought" was as follows:

"All similarly situated employes receive pay commensurate with attorneys for all job assignments, duties and responsibilities performed as administrative hearing examiners."

The grievance was denied at each of the three steps as follows:

1. "Grievance denied. The Unilateral Grievance procedure specifically provides for the filing of a grievance by the aggrieved employe. No authorization exists for a union representative to file a grievance under the unilateral provision nor does Chapter 16 of the Wisconsin Statutes provide for local union class action."
2. "Grievance denied. There is no provision within the contract or within the Personnel Rules for a Union representative to file a unilateral grievance."
3. "The unilateral grievance procedure provides for the filing of a grievance by the aggrieved employe. No authorization exists for a Union representative to file a grievance under the unilateral provision nor does Chapter 16 of the Wisconsin Statutes provide for local union class action. Grievance denied."

The first step grievance had been filed with a supervisor who had only one employe under his supervision who was assigned to administrative hearings for AFDC appeals as alleged in the grievance--one Susan Wood. She had not been informed of the filing of the grievance and objected to it in a letter to Mr. Beil dated February 24, 1977, part of which follows:

". . . I wish to inform you that I object to this grievance on these grounds:

1. Although the grievance fails to name the affected employees, you chose to deliver it to my immediate supervisor, thereby making it a part of my personnel record. Since I am the only person under his supervision currently engaged in such activities, I must presume that you were acting on my behalf in filing this grievance.

2. I was not consulted regarding this action, nor was I informed of its implementation by anyone connected with your union; I learned of it only from my supervisor after it was fait accompli.
3. The grievance states in part that the job assignments, duties and responsibilities associated with the position of hearing officer are not within the scope or job descriptions of these employees. I feel that personally this is an inaccurate statement, that my job description does not necessarily preclude such an assignment, and that I am qualified by my job experience and program knowledge to function adequately as a hearing officer.

Based on these objectives [sic], I ask that you either abandon this grievance, or withdraw it and then resubmit it only after you have contacted each of the affected employees and secured their prior approval of your activities. If you do follow this second course, please be advised that I do not wish to be a party to this grievance."

#### CONCLUSIONS OF LAW

The respondent argues in his brief that the subject matter involved here is not grievable citing the Administrative Practices Manual (APM), Sec. I.D.1. b. (1) and (2) as follows:

"b. A grievance is defined as a personnel problem involving an employe's (or a group of employes) expressed feeling of unfair treatment or dissatisfaction with aspects of his/her working conditions within the agency which are outside his/her control. However, only those complaints which allege that an agency has violated, through incorrect interpretation or unfair application:

- 1) a rule of the Director, State Bureau of Personnel or a Civil Service Statute (s. 16.01 - 16.38, Wis. Stats.)

or

- 2) a function where the Director of the State Bureau of Personnel has expressly delegated his authority to the appointing officer."

The subject matter of this grievance involves the assignment of duties to employes. The appellant in his brief suggests that certain civil service statutes, including ss. 16.07 and 16.04 were thereby violated. Section 16.04(1)(b) provides:

"Each appointing authority shall:

"Appoint persons to the classified service, designate their titles, assign their duties and fix their compensation, all subject to this subchapter and the rules of the director." (Emphasis supplied.)

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The appellant's allegation is sufficient to provide subject matter jurisdiction. The question of whether his contention is correct goes to the merits and need not be discussed at this point.

The respondent also argues that the grievance was filed only on behalf of Susan Woods, and that since she withdrew there is no aggrieved party. As noted above, the grievance named no specific employees but referred to at least seven affected members of the union. The respondent's argument is based on the provision of the grievance procedure that grievances must be filed at the first step with the immediate supervisor. Since the first step grievance was filed only with the immediate supervisor of Ms. Woods, the theory is that the grievance was effective only as to her. However, the denial of the grievance at all steps was based on grounds which would apply to all of the potentially effected employees. As was held in Renne v. Carballo, Wis. Pers. Bd. No. 75-5 (8/25/77), the provisions of the grievance procedure are not jurisdictional. Given the broad nature of the grounds for denial of the grievance at each step, the respondent's objection is at this point essentially of a technical nature. Had it been raised at any of the steps in the grievance procedure it might have been remedied by the appellant by refileing the grievances at the first step in the appropriate places. For all of these reasons it is concluded that the failure to file with the immediate supervisors of any other affected employees is at most harmless error and has been waived by respondent's agents in their processing of the grievance as they did.

Respondent also argues that the appellant lacks standing to pursue this grievance on behalf of the various affected employees in a unilateral grievance procedure. The APM's definition of grievance refers to "an employee's (or a group of employees) expressed feelings of unfair treatment or dissatisfaction . . . ." In Kaukl v. Earl, No. 74-127 (2/23/76), this board held that a union

representative had standing to represent the union's collective interests:

"In matters of this nature, a number of courts have recognized the standing of labor associations to pursue litigation on behalf of their collective membership. See Lodge 1858, American Federation of Government Employees v. Paine, 436 F. 2d 882, 893-894 (D.C. Cir. 1970); Council 34, AFSCME v. Ogilvie, 465 F. 2d 221, 225 (7th Cir. 1972)."

In Hoefl v. Carballo, Wis. Pers. Bd. No. 74-37 (5/24/76), it was also held that the appellant as union president had standing to represent the interests of individual union members.

Therefore, based on the record to date and subject to other facts which may be developed, it is concluded that the appellant has standing to represent the collective interests of the union as well as the individual interests of the affected employees. Since Ms. Wood withdrew, she is not part of this appeal. The board reaches no conclusion one way or another whether the appellant can represent the interests of individual employees beyond the 7 (or 6, less Ms. Wood) mentioned in the grievance in a "class action" manner that potentially might entitle them to individual relief if this appeal were to succeed on the merits. This question has not been briefed. If appellant wishes to attempt to pursue the appeal in this fashion, he shall make this clear by filing an appropriate motion at or prior to the prehearing conference or with the statement of cause referred to in the order below.

Finally, respondent argues that the case has been mooted by the cessation of assignment of social workers as alleged in the grievance.

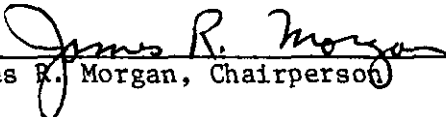
Respondent attempts to distinguish Watkins v. DILHR, 69 Wis. 2d 782 (1975), and personnel board cases applying its rule on mootness on the theory that the right to a determination extends to individuals and not to the union's interest. However, the Supreme Court in the Watkins case discussed the policy factor of checking improper state activity. For these and other reasons, this distinction is rejected. Also, there are individual interests identified on the record to date.

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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 not be dismissed.

Dated: 11-15, 1977. STATE PERSONNEL BOARD

  
James R. Morgan, Chairperson