

STATE OF WISCONSIN

STATE PERSONNEL BOARD

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ELIZABETH A. SCHMID,

Appellant,

v.

SECRETARY, DEPARTMENT OF TRANSPORTATION,

Respondent.

Case No. 77-177

* * * * *

OFFICIAL

OPINION AND ORDER

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

NATURE OF THE CASE

This is an appeal of a noncontractual grievance at the fourth step pursuant to s. 16.05(7), Wisconsin Statutes. The respondent moved to dismiss at the prehearing conference on the grounds that the board lacks subject matter jurisdiction.

FINDINGS OF FACT

It appears uncontested from the file to date and it is found that the appellant notified the agency by letter dated July 27, 1977, that she would be terminating with the research unit as of August 12, 1977, and would be taking some time as vacation time. At the time of writing this letter, the appellant had obtained a transfer to another agency. She then submitted a noncontractual grievance, which is the subject of this appeal, at the first step on July 30, 1977. The agency has consistently refused to process this grievance and bases this objection to subject matter jurisdiction on the following provision of the department of transportation noncontractual grievance procedure:

"Employees who voluntarily terminate their employment will have any grievance(s) in process immediately withdrawn . . ." (Transportation Advisory Manual 412-1, §IV, pp. 3-4) (This provision is identical in substance to a similar provision found in the uniform noncontractual employe grievance procedure found in the administrative practices manual, Bulletin Number 1. This uniform grievance procedure was promulgated by the director pursuant to §Pers. 25.01, W.A.C., which requires that agency grievance procedures "meet standards established by the director.")

CONCLUSIONS OF LAW

The question presented by this case is whether the employe's transfer to another agency should be considered to fall within the meaning of "voluntarily terminate their employment" as used in the grievance procedure.

With respect to the definition of the term "terminate their employment," the most direct guidance available is found in the rules of the director which define "employe" as "any person holding a position in the classified civil service," §P.B. 1.02(6), W.A.C. It would be consistent with this definition to define "employment" as the holding of a position in the classified service. Since the appellant apparently held a position in the classified service both before and after the transfer, the transfer would not have terminated her employment using the meaning derived from this administrative code rule.

This construction is consistent with the language in the uniform grievance procedure in the section on "coverage":

"Subject to the limitations in section C2 below, this grievance procedure shall be available to any employe, except that employes employed on a limited term employment basis are not covered under this grievance procedure." §I.B., A.P.M.

Section C2 excludes employes covered by a collective bargaining agreement for the subjects of collective bargaining, employes in a certified collective bargaining unit prior to the execution of a contract under

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certain circumstances, employes in a potential bargaining unit under certain circumstances, employes on probation or trial with respect to their retention or release, and certain classification transactions. There are similar exclusions in the TAM procedures.

An employe is defined as "any person holding a position in the classified service," §Pers. 1.02(6), W.A.C. The appellant has had continuous service and was an "employe" under this definition both before and after her transfer.

The APM extends coverage to all "employes" with the exception of certain very specific classes of employes, as outlined above. This enumeration does not include employes who have transferred from one agency to another following the filing of the grievance, and we see no basis for reading this in on some kind of implied basis in light of the enumeration of specific exceptions to the general rule.

The subject matter of this grievance primarily concerned the denial of a monetary performance award. It would be an anomalous result to construe the grievance procedure in a manner that would prevent an employe from having that decision reviewed because he or she transfers to another agency before the grievance concerning that denial can be processed. Compare, Waggoner and Denniston v. State Personnel Board, Dane County Circuit Court 134-442 (7/21/72), where the board was reversed for failing to hear an appeal of a grievance concerning the denial of a merit pay increase. In such cases, there also could be no argument that the subject of the grievance is mooted by a transfer to another agency.

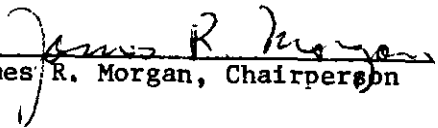
ORDER

The respondent's actions in refusing to process this grievance are rejected and this matter is remanded to the agency for processing the grievance on the merits.

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Dated: 2-20, 1978.

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James R. Morgan, Chairperson