

STATE OF WISCONSIN

STATE PERSONNEL BOARD

MERLIN E. MANGERT,

Appellant,

v.

SECRETARY, VETERANS AFFAIRS and
DEPUTY DIRECTOR, BUREAU OF PERSONNEL,

Respondents.

Case No. 77-226

OFFICIAL

OPINION AND ORDER

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

NATURE OF THE CASE

Appellant filed an appeal from the action of the director of the bureau of personnel, reclassifying a fellow employe's position from stock clerk 2 to storekeeper 1. He filed the appeal under Article X of the Agreement between Council 24 WSEU, AFL-CIO and the State of Wisconsin (hereinafter the Agreement). Respondents have moved to dismiss on the grounds that the Board lacks subject matter jurisdiction or, in the alternative, that the Board should not exercise its discretion to hear this appeal.

FINDINGS OF FACTS*

1. Appellant began working at the Wisconsin Veterans Home on October 3, 1955, in a stock clerk 1 position.

2. In 1962 Appellant's position was reclassified to stock clerk 2.

3. In August 1974 Appellant requested a reclassification but it was denied by memorandum from Don Wentland, Personnel Manager, Department of Veterans Affairs, dated September 9, 1974. The memorandum included the following paragraph:

* These findings are based upon the written record to date and are only made for the purposes of deciding this motion to dismiss.

The lead work functions at the Veterans Home are performed by the stores supervisor as well as assuming full responsibility for the stores operation. We anticipate a vacancy in the stores department in the near future at which time serious consideration will be given to all positions in this category and all qualified employees will be eligible to compete for available positions.

4. Apparently a fellow worker whose position was classified as stock clerk 2 requested that her position be reclassified to storekeeper 2. This request was granted effective February 1, 1977.

5. Appellant learned of the reclassification on September 1, 1977. On September 26, 1977, he filed the first step of a contractual grievance. The grievance alleged violations of articles V, X and XI of the Agreement for "failure to be considered for promotion brought to my attention 9-1-77." Appellant requested "to be promoted to storekeeper II without prejudice [sic]." Each successive step of the grievance was denied by management. The third step denial was returned to Appellant on December 16, 1977.

6. Appellant filed an appeal with this Board on December 19, 1977.

CONCLUSIONS OF LAW

1. The time limits for filing under Article X of the Agreement are the same as required for filing the first step of a contractual grievance under Article IV, Section 1. In re Request of AFSCME, Council 24, WSEU, AFL-CIO, for a Declaratory Ruling, Case No. 75-206 (8-24-76).

2. Appellant did not file his appeal in a timely manner and this appeal should be dismissed.

OPINION

In In re Request of AFSCME, Council 24, WSEU, AFL-CIO, for a Declaratory Ruling, Case No. 75-206 (8-24-76), we held that the authority for the Board to hold hearings under Article IV, Section 10 of the Agreement came from Article X and Section 111.91(3), Wis. Stats. In setting forth the procedures to be

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followed in filing a request for hearing under Article IV, Section 10 and Article 10 of the Agreement, we further held that the time limit would be the same as found under Article IV, Section 1, paragraph 36, that is:

All grievances must be presented promptly and no later than thirty (30) calendar days from the date the grievant first became aware of, or should have become aware of with the exercise of reasonable diligence, the cause of such grievance.

Appellant was aware of the change in classification of the other worker's position on September 1, 1977. The appeal was not received by the Board until December 19, 1977. The appeal was not received by the Board until December 19, 1977. The appeal was clearly filed with the Board beyond the 30 day time limit.


It is argued by Appellant that since he filed a timely grievance at the first step and that he ultimately filed with the Board within 30 days of receiving his third step denial that the appeal is timely. We find this argument unpersuasive. We do not conclude that by filing a contractual grievance alleging violations of articles V, X, and XI of the Agreement that Appellant tolled the time limit for filing the appeal with the Board. An appeal under Article X is directly appealable to the Personnel Board. Based upon a review of the entire record, we cannot conclude that there was a constructive timely filing of the appeal.

ORDER

IT IS HEREBY ORDERED that the appeal was not timely filed and is dismissed.

Dated: May 18, 1978.

STATE PERSONNEL BOARD


James R. Morgan, Chairperson