STATE OF WISCONSIN — BOARD OF PERSONNEL

In the Matter of the Appeal of

GLARENCE H. LINDOW — MEMORANDUM DECISION

from the resignation secured from him by the Department of Public Welfare on April 23, 1963.

Appellant, Clarence H. Lindow was employed by the Wisconsin Department of Public Welfare for approximately seventeen years, and on April 23rd, 1963, he was so employed as an Officer I at the Wisconsin State Reformatory at Green Bay, Wisconsin. On said April 23rd he was called to the office of Michael A. Skaff, Warden, and confronted with the accusation that he had sold a radio to an inmate in violation of Sec. 53.095 of Wisconsin Statutes, which violation appellant admitted.

Upon the hearing of the appeal conflict of testimony developed, Appellant testifying that he was threatened with two years imprisonment or a fine of One Thousand Dollars if he did not resign, whereas Respondent produced testimony to the effect that Lindow was advised to contest the charge if he were not guilty, but that he would be suspended until an investigation was completed.

In any case, onApril 23rd, Appellant signed a letter of resignation effective immediately. Later, Appellant reconsidered his action in resigning, and, in a letter dated April 29, 1963 to the Wisconsin State Employees Association he requested that the Association arrange a hearing before the proper authorities for the purpose of reinstatement. Upon being informed by the Executive

obtained by duress. This letter was the first notice of appeal received by either the Bureau or the Board of Personnel.

Two problems are presented in this appeal: (1) Does the Board have jurisdiction, and (2) Do the circumstances surrounding Appellant's resignation constitute duress.

Section 16.24 of Wisconsin Statutes of 1961 is controlling upon the question of jurisdiction. So far as it is material it provides:

> "(1) (a) No permanent . . . employee in the classified service . . . shall be removed, suspended without pay, discharged, or reduced in pay or position except for just cause, which shall not be religious or political . . . In all such cases the appointing officer shall, at the time of such action, furnish to the subordinate in writing his reasons for the same . . . Within 10 days after the effective date of such action of the appointing officer, the employe may appeal to the board . . . .

Obviously the statute does not contemplate a situation where the appeal is from the Appellant's own action (i.e. resignation) even though this action may be involuntary, and, of course, by reason of the submitted resignation, the appellant was not supplied with written reasons for disciplinary action as required by the statute.

In Piercey v. Civil Service Commission of Salt Lake City, 116 Utah 135, 208 Pacific (2nd) 1123, it was held that the Board was without jurisdiction to hear an appeal where the employe resigned under alleged threats of damaging publicity, the court stating:

> "The statute does not give the Commission the power or right to determine whether a person in the Civil Service who has resigned from his office or employment did so because of duress, coercion, or fear brought upon him by the head of the Department in which he is employed. The Civil Service Commission, like other tribunals of limited jurisdiction, can exercise only such powers as are conferred on it by statute."

It seems quite apparent that Wisconsin follows the rule of the Piercey case that the Board of Personnel can claim no more powers than those definitely delineated by statute. In Berg v. Seaman, 224 Wis. 263, the Board of Personnel, on appeal by a discharged hospital

employe, found that the facts did not justify the discharge and ordered the appointing officer to offer appellant the opportunity to re-enter the service of the hospital "in the capacity of attendant", which the superintendant refused to allow. The Court found that the Board had no authority except that given by statute to either sustain the action of the superintendant in removing or to reinstate. The Court stated that the order to re-employ was not reinstatement.

In Baken v. Vanderwall, 245 Wis. 147, the Board of Personnel held a hearing in accordance with Sec. 16.24 Stats. and dismissed the appeal of discharged conservation Warden Baken. Sometime later the Board voted unanimously to reconsider its action and directed the appellant and conservation director Ernest L. Swift to appear at a further hearing at which they gave testimony resulting in the Board reversing its decision and making new findings reinstating Baken. The Court in reversing the Circuit Court stated:

> "We are unable to find where it had such power. The powers of the Board are fixed by Statute and are limited in authority as defined by the statute creating it. This frequently has been held to be the rule as to commissions and bureaus. (cases cited) There is no provision of the statute authorizing a rehearing or reconsideration of a matter that once has been determined."

This Board can find no authority in the statutes giving it jurisdiction to hear this appeal.

Inasmuch as the Board has decided it has no jurisdiction for the consideration of the appeal, it becomes unnecessary to determine whether Appellant's resignation was obtained by duress. However, other and more august forums have indulged in the luxury of dicta and this Board feels so impelled if only for the satisfaction of the appellant who may otherwise feel that it has labored mightily to bring forth a mouse.

This Board unanimously feels that Appellant, rather than having been badly used, received more consideration than he had a

right to expect. By his own admission he was guilty of the offense charged. As was stated by the Court in the Piercey case:

> "It is not uncommon for an administrative officer who finds it necessary to remove an employee to give the employee an opportunity to resign rather than be discharged, as was stated in the Thompson case just referred to above. This is indulging a kindness to the employee in protecting him and his work record. It would be a dangerous doctrine to hold that to offer an employee his choice of resigning or accepting a discharge would amount to such compulsion that the employee could avoid his resignation for duress. If such were the law, then anytime an employer mentioned the subject of discharge to his employee, he would have to go ahead and discharge him and could not give the latter the choice of resigning because the resignation would be voidable."

It is unnecessary and gratuitous to further labor the point; the appeal of Clarence H. Lindow is dismissed for lack of jurisdiction. The Board will prepare formal Findings of Fact and Conclusions of Law.

Dated this 19 day of November, 1963.

Acting Chairman