

APR 20 1976

STATE OF WISCONSIN : IN CIRCUIT COURT : DANE COUNTY

#149-295  
STATE OF WISCONSIN, ex rel.,  
DEPARTMENT OF ADMINISTRATION,  
BUREAU OF PERSONNEL,  
DEPARTMENT OF INDUSTRY, LABOR  
AND HUMAN RELATIONS,  
VIRGINIA HART, JOHN ZINOS,  
and WILLIAM JOHNSON,

Relators,

-vs-

PERSONNEL BOARD and  
PERCY L. JULIAN, JR.,

Respondents.

MEMORANDUM

DECISION

DANE COUNTY WISCONSIN

10 APR 19 8:36 AM

This case began with a search for applicants to fill several Hearing Examiner positions in the Wisconsin Department of Industry, Labor and Human Relations (Department). Among the 39 persons applying were nine female attorneys.

Unsuccessful applicants for two hearing examiner positions in the Department's EEOC Project (funded by the Federal Equal Opportunity Commission) were informed of the Department's final hiring decisions on or about July 2, 1974. Five of the female applicants subsequently filed appeals of the hiring decisions with the State Board of Personnel (Board) pursuant to s. 16.05(1)(f), Stats., alleging illegal sex discrimination. Those appeals were filed on September 4, 1974, some 18 days beyond the 15-day time limit of s. 16.05(2), and s. 16.05(1)(f), Stats.

The Board subsequently issued a decision that despite the tardiness of the five appeals in question, it would assume jurisdiction pursuant to its authority under s. 16.05(4) Stats. It is that decision and the Board's intention to assert jurisdiction over the appeals which are challenged in the relators' petition for an absolute writ of prohibition.

With respect to the Board's clearly delegated authority to hear appeals under s. 16.05(1)(f), s. 16.05(2) provides:

"The board shall not grant an appeal under sub. (1) (e) or (f) unless a written request therefor is received by the board within 15 days after the effective date of the decision, or within 15 days after the appellant is notified of such decision, whichever is later. \* \* \*."

S. 16.05(4) provides:

"The board may make investigations and hold hearings on its own motion or at the request of interested persons and issue recommendations concerning all matters touching the enforcement and effect of this subchapter and rules prescribed thereunder. If the results of an investigation disclose that the director, appointing authority or any other person acted illegally or to circumvent the intent and spirit of the law the board may issue an enforceable order to remand the action to the director or appointing authority for appropriate action within the law. \* \* \*."

Taken together, s. 16.05(1)(f) and 16.05(2) specifically authorize the Board to hear appeals, filed within 15 days of either the date of decision or the date of disclosure of the decision to the interested party, relating to hiring decisions. Such appeals are of the kind in question here. The provisions of s. 16.05(2) are mandatory, setting up an inflexible, nondiscretionary statute of limitations for such appeals. This section dictates unequivocally that the Board is powerless to hear an appeal not timely filed.

S. 16.05(4) is a broader, general statute providing for basic investigative authority on the part of the Board. The Board is empowered to study broad policy questions and the general operation of the Civil Service system and is given some clout to be exercised in using this power by the provision authorizing issuance of recommendations and enforceable orders relating to matters of illegal or improper conduct of the director or appointing authority.

S. 16.05(4) picks up where s. 16.05(1)(f) leaves off. The Legislature's purpose was to allow the Board to go substantially beyond consideration of specific complaints in individual cases concerning application of the Civil Service law. Its purpose was clearly to separate the two functions, however. The s. 16.05(4) powers are not intended to duplicate the s. 16.05(1)(f) powers but are meant to be complementary.

In interpreting items of legislation, the Court's duty is to harmonize the various parts whenever possible. It is a well-established rule in Wisconsin that when a general and a specific statute relate to the same subject matter, here the power of the Board to look into possible illegal conduct of the director or appointing authority in regard to operation of the civil service system, the specific statute will control. Raisanen v. Milwaukee (1967), 35 Wis. 2d 504; Board of Education v. WERC (1971), 52 Wis. 2d 625.

This Court's duty is clear. The Legislature's intent was to have s. 16.05(1)(f) and 16.05(2) apply to specific appeals made to the Board, and to have s. 16.05(4) apply to the Board's other investigative responsibilities. By holding that s. 16.05(4) is inapplicable where s. 16.05(1)(f) applies, the rule that a specific statute controls over a general statute is followed and the sections are harmonized.

In matters of administrative review, the time for commencement of an appeal or action for review in a court is a strict limitation on the court's jurisdiction. Monahan v. Wisconsin Department of Taxation (1963), 22 Wis. 2d 164; Cudahy v. Department of Revenue (1974), 66 Wis. 2d 253. An administrative agency is subject to this same limitation of jurisdiction. An appellant before an agency must strictly comply with the applicable time limitations. Chevrolet Division, G.M.C., v. Ind. Comm. (1966), 31 Wis. 2d 481. The Board has no jurisdiction to hear the appeals concerning hiring for the EEOC Project because of their untimeliness.

Where an agency seeks to exercise jurisdiction in excess of its statutory authority, prohibition will lie to prevent the agency from so acting. State ex rel. Department of Public Instruction v. ILHR Department (1975), 68 Wis. 2d 677.

It is, therefore, the Order of the Court that an absolute Writ of Prohibition issue against the Respondents to prohibit them from hearing the appeals of complainants Jarvis, Learned, Roberson, Borkenhagen, and Fraser concerning the hiring decision on the EEOC Project.

Dated: April 17, 1976.

BY THE COURT:

Norris Maloney  
NORRIS MALONEY, CIRCUIT JUDGE