

STATE OF WISCONSIN

BEFORE THE STATE BOARD OF PERSONNEL

In the Matter of the Lay-off of)

DOURAINÉ THOMAS)

#381

MEMORANDUM DECISION

Appellant, under date of January 28, 1971, has filed the following appeal with the State Board of Personnel:

"I, Douraine Thomas, Baker 1, at the University of Wisconsin-Milwaukee, appeal my lay-off on January 20, 1971, from employment under Chapter 22 of Wisconsin Administrative Code, citing violations of Pers 22.05, Pers 22.06 and Pers 22.07."

s. 16.24(2) Wis. Stats. provides in part:

". . . In case of a reduction in force because of a stoppage or lack of work or funds or because of material changes in duties or organization, permanent employes shall be laid off in accordance with rules established by the personnel board."

It was pursuant to this statute that Chapter Pers 22 was adopted by the personnel board effective July 1, 1964.

In 1965 the Director of the State Bureau of Personnel proposed several changes in the lay-off rules. The board required the Director to obtain an Attorney General's opinion as to the rule changes before considering them. Such an opinion was obtained under date of February 9, 1965, from Bronson C. LaFollette, Attorney General.

Pers 22.07 and the proposed rule changes both provided a permanent employe, laid off under s. 16.24(2) Wis. Stats., or reduced in pay or position in lieu of lay-off with a right of appeal from such action to the State Personnel Board.

The Attorney General concluded that the providing of such right of appeal by Pers 22.07 or any successor rule, is not authorized by statute, and is, in fact, in conflict with a statute clearly showing that our Legislature has not granted - and has not intended to grant - such right of appeal.

He also ruled that Pers 22.06 was void and that 22.05 was of doubtful validity.

Because of this opinion, the board did not adopt the Director's proposed changes in 1965, and has regarded Pers 22.05, 22.06 and 22.07 as invalidated rules.

When this appeal and companion appeals were presented and because there was a different administration in the Attorney General's office, the board had the opinion of February 9, 1965 reviewed. The present Attorney General informally concurred in the earlier conclusions.

As the Attorney General is the legal officer of all state agencies, this board is bound by his opinion that an employe laid off under s. 16.24(2) Wis. Stats has no right to appeal to the personnel board.

Accordingly, this appeal shall be and is dismissed because the board has no jurisdiction to hear it.

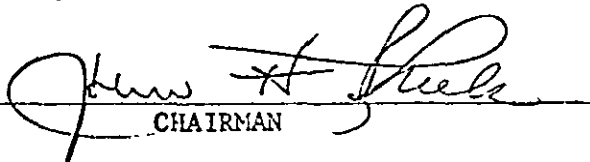
The Attorney General has indicated that an employe could directly seek a judicial review of the lay-off by the Circuit Court under Chapter 227 Wis. Stats. It may also be possible that the employe could seek redress under the State-Wide Grievance Procedures. As to the availability of the latter, the board expresses no opinion.

A copy of the Attorney General's opinion of February 9, 1965 may be obtained by contacting the Secretary, Room 244, State Office Building, Madison, Wisconsin.

Dated: February 23rd 1971.

STATE BOARD OF PERSONNEL

BY


CHAIRMAN