
 HENRY J. LAUB, *
 *
 Appellant, *
 *
 v. *
 *
 WILBUR J. SCHMIDT, Secretary, *
 Department of Health & Social Services, and *
 C.K. WETTENGEL, Director, State Bureau of *
 Personnel, *
 Respondents. *
 *
 Case No. 73-154 *

OFFICIAL

OPINION AND ORDER

Before: JULIAN, Chairperson, SERPE, STEININGER and WILSON, Board Members.

NATURE OF THE CASE

This is an appeal of a grievance concerning Respondents' refusal to allow Appellant to take a promotional exam during scheduled working hours and credited as paid leave time. At the hearing before the Board the Appellant did not appear personally but was represented by the Union Local Steward, a person not licensed to practice law, subject to Respondents' objections to his representation on that ground. This objection was overruled subject to a final ruling by the full Board.

FINDINGS OF FACT

At all relevant times the Appellant was a permanent employee in the classified service, employed as a social worker at the Wisconsin State Prison, Division of Corrections, Department of Health and Social Services. The Appellant was denied permission to take a promotional examination for Correctional Officer V during his normal working

hours without being required to utilize vacation or holiday time.

The institution had scheduled the examination at two different times on the same day so that prison employees could take it during their off hours.

The exact reasons for his absence were unexplained, but the Appellant did not appear at the hearing before the Board. Appearing at his request and on his behalf was the Union Local Steward, Daniel Rindt, who was not licensed to practice law. The Respondents objected to his participation on the grounds that it constituted the unauthorized practice of law. The hearing officer allowed the Steward's participation subject to the objection.

The Steward was sworn as a witness and furnished some testimony about the operative facts. He also made some factual and legal arguments and cross-examined witnesses.

CONCLUSIONS OF LAW

Before dealing with the merits we will take up Respondents' objection to Mr. Rindt's representation of Appellant.

We first conclude that Mr. Rindt's appearance at the hearing in this matter clearly constituted the unauthorized practice of law. Although he did act as a witness in some respects, Mr. Rindt was the only person present who represented the Appellant's interests. He presented the Appellant's case, cross-examined witnesses and made arguments concerning the facts and the law. The hearing before the hearing examiner was a quasi-judicial proceeding at which Appellant's legal rights under Subchapter II of Chapter 16, Wisconsin Statutes, were at stake.

In State ex rel State Bar v. Keller, 16 Wis. 2d 377 (1962), the Wisconsin Supreme Court held the following activities before the Public Service Commission constituted the unauthorized practice of law by one who was not licensed to practice law:

He has made applications to the P.S.C. in behalf of his clients for authority to conduct trucking operations, handled proceedings on behalf of various truckers and in opposition to the granting of permits to other truckers. In the course of these proceedings respondent has examined witnesses and taken such steps as necessary to make a record upon which formal action may be taken by the commission adjudicating the rights of the parties. (Emphasis supplied.) 16 Wis. 2d at 384.

Mr. Rindt performed exactly this type of function and it is undisputed on this record that he is neither licensed to practice law as an attorney, nor does he enjoy some other paraprofessional status recognized by the Supreme Court, such as that of a law student, that would provide authorization for this practice.

Having reached this conclusion we further conclude that we may not allow or otherwise sanction such an unauthorized practice. Our Supreme Court has made it very clear that control of the practice of law is vested in the judiciary. See State ex rel Reynolds v. Dinger, 14 Wis. 2d 193 (1961):

We do, however, expressly disavow the language and the thought contained in it [referring to In re Connor, 206 Wis. 374, 395 (1932)] that the court's interest in and powers of regulation and control of the practice of law do not embrace and include the activities of persons, not licensed as attorneys, who may practice law outside of actions and proceedings in court. On the contrary, we hold that such broad power over the practice of law is a judicial power vested in the courts by sec. 2, Act VII of the state constitution. 14 Wis. 2d at 202.

See also State ex rel State Bar v. Keller, supra, 16 Wis. 2d at 386, 387:

The legislature's creation of the public service commission with its rule-making powers does not in any way supersede the exclusive power of the judiciary, ultimately residing

in the supreme court, to determine what is or is not the practice of law and to restrict such practice to persons licensed by the court to engage in it.

* * *

In like manner the public service commission may countenance appearances before it by laymen but it may not by any rule or otherwise empower any person not licensed to practice law to practice it, or to grant immunity to one who does. (Emphasis supplied.)

If we were to permit the activities of Mr. Rindt before the Board, which clearly constitutes the unauthorized practice of law, we would act in direct contravention of these explicit holdings by our Supreme Court, which were reaffirmed in State ex rel State Bar v. Bonded Collections, 36 Wis 2d 643, 649 (1967):

. . . neither the legislature, nor any of its creatures, in contravention of the exclusive power of the judiciary, may authorize the performance of legal services by non-lawyers, either directly or indirectly (Emphasis supplied.)

The Personnel Board is a body created by the legislative branch of government. As such, we may only act in this area in aid of the judiciary's power of regulation:

Other branches or departments of government by statute, rule, or regulation may aid but not thwart the court in its exercise of the court's constitutional powers. For an example of aid, see sec. 256.30 (1), Stats., supra, imposing penalties for practicing law without a license. State ex rel Reynolds v. Dinger, supra, 14 Wis. 2d at 203.

We may take steps to prevent the unauthorized practice of law in practice before us; we may not countenance, condone, or permit such unauthorized practice. While it might be in the best interests of sound public policy for there to be a means of licensing and assuring the competence and accountability of non-attorneys to practice before administrative bodies, this is a matter for the judiciary.

We emphasize that this decision applies only to hearings of contested cases and does not apply to Personnel Board quasi-legislative proceedings or prehearing conferences.

The Appellant failed to appear, without explanation, at the hearing of his case but relied on Mr. Rindt to present his case. If the Respondents' objection to Mr. Rindt's representation had been sustained when it was made, the appeal then would have been dismissed for failure of prosecution. Since we now conclude that the objection must be sustained, we further conclude that Appellant's evidence presented at that hearing must be stricken and that this appeal must be dismissed. We would like to utilize this opportunity to comment on the the seeming failure of some parties and attorneys to accord Personnel Board hearings any priority in scheduling their activities. Hearings once scheduled should not be rescheduled except for the most pressing reasons.

ORDER

IT IS HEREBY ORDERED that this appeal is dismissed.

Dated November 25, 1975.

STATE PERSONNEL BOARD


Percy L. Julian, Jr., Chairperson