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PERSONNEL BOARD
STATE OF WISCONSIN
MADISON

STATE OF WISCONSIN

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STATE PERSONNEL BOARD

BARBARA McMANUS,)	
)	
Appellant,)	
)	
v.)	OPINION
)	AND
)	ORDER
JOHN C. WEAVER, President,)	
University of Wisconsin,)	
)	
Respondent.)	
)	
Case No. 73-171)	
)	

Before AHRENS, Chairman, SERPE, JULIAN and STEININGER
STEININGER writing for herself and the other Board Members.

OPINION

Facts

The facts that pertain to determining the Appellant's motion to reinstate are not in dispute. The Appellant is a permanent employe. The parties have agreed that the appeal is timely. The Director of the State Bureau of Personnel maintains an official roster of those persons who are appointing authorities and such list does not contain the name of Dr. Paul Kaesberg. We find that Dr. Kaesberg is not, and was not, at any time material hereto, an appointing authority.

On October 18, 1973, Dr. Kaesberg discharged the Appellant. She filed a grievance, which did not raise a question relative to his authority, but she did raise the issue by motion at the hearing. We find these additional facts which pertain to the Respondent's contention that Appellant is estopped from challenging Dr. Kaesberg's authority now after not having done so earlier.

The Board members have read a transcript of the testimony and have received the report of the hearing officer recommending reinstatement. We find the foregoing facts to be true and concur in the recommendation of the hearing officer for the following reasons.

Who May Discharge a State Employe?

The civil service law places the power to discharge employes in the particular person who is identifiable as the appointing authority. Section 16.02,

Wis. Stats., 1971 defines an appointing authority as an officer having the power of removal from subordinate positions. Section 16.04(1)(d) lists among the duties of an appointing authority to report to the director each separation from the service. Section 16.22(1)(a) provides that where the appointing authority discharges a probationary employe, he must report the reason to the employe and the director. Similarly, Section 16.28(b) provides that where the appointing authority discharges or takes other enumerated action against an employe, he shall notify the employe in writing of the reasons therefor. In Odau v. Personnel Board of State, 250 Wis. 600 (1947), the Court said the civil service law contemplates that discharges are to be made by the appointing officer of the office, department, commission, board, or institution which is concerned with the position in question. In all of the foregoing statutory references and in the case cited, the reference is to the officer who has the power to appoint and remove and does not contain any reference to his agent or representative. The power must be exercised by the appointing officer who has the authority and may not be exercised by others on his behalf.

The director has adopted rules which permit the appointing authority to delegate the power of appointment to subordinate officers in a prescribed manner. This delegation may in essence be no more than a recognition of the fact that such subordinate officers do in fact appoint and remove employes. Pers 1.02, Wis. Adm. Code, October 1972 provides:

In addition to those terms defined pursuant to section 16.02, Wis. Stats., the following are definitions for terms used in these rules:

(1) "Appointing authority" means the officer, commission, board or body having the power of appointment to, or removal from, subordinate positions in any office, department, commission, board or institution. An appointing authority may delegate the power of appointment to subordinate officers providing such delegated authority is in writing and a copy is filed with the director.

The requirement that records be maintained as to who are appointing authorities tends to confirm that only certain persons who by virtue of their positions have the power to appoint and remove are appointing authorities and then only if their names have been filed with the director.

The director is charged by statute to establish guidelines relative to the removal of employes, which provide that an appointing authority or his authorized representative must approve all discharges. Section 16.28(1)(c), Wis. Stats., 1971 provides:

The director shall establish guidelines for the uniform application of this authority among the various departments.

Guidelines for Handling Disciplinary Actions, Bureau of Personnel, November 1972, p. 9 provides:

IV. DISCIPLINARY ACTIONS AVAILABLE UNDER CIVIL SERVICE

When counseling fails to lead to the solution of an employe problem, disciplinary action may have to be taken. Supervisors have full authority to initiate verbal and written reprimands. More severe actions may be taken with the approval of the appointing authority or his authorized representative. Under Wisconsin Civil Service, an appointing authority or his authorized representative is the designated individual having authority to initiate actions affecting an employe's payroll or personnel status, including hiring or firing. He must approve all disciplinary actions involving loss of pay, demotion, or termination. (Emphasis added)

In the instant case, Dr. Kaesberg was not an appointing authority since his name had not been filed with the director as such and therefore he did not have the authority to discharge the Appellant.

Appellant's discharge was ineffective since the person who took the action did not have the power to discharge. The statutory procedure for dismissal must be strictly adhered to so that the purpose of the statute to provide protection against unjust action will be effectuated.^{1/} The Appellant's dismissal was not in accordance with the procedures prescribed by statute and therefore, such attempted action is void. Nilson v. State Pers. Bd., 25 Cal.App. 2d 699; 78 P. 2d 467 (1938). People ex rel. Goldschmidt v. Board of Education 217 N.Y. 470; 112 N.E. 167 (1916).

The Respondent argues that Appellant is estopped from raising an issue concerning Dr. Kaesberg's authority since she did not do it in a timely manner in her grievance or at any time before the hearing. In Gabriel v. Gabriel 57 Wis. 2d 424 (1972), the Court listed the three factors essential for the

^{1/} One practical aspect of this requirement is to prevent line supervisors from taking action as a reprisal against an employe without such action being reviewed by a higher official who is an appointing authority.

recognition of equitable estoppel. They are 1) action or inaction which induces 2) reliance by another 3) to his detriment. We conclude that none of these factors are present here, since the Respondent did not rely on something that the Appellant did which has caused him to be at a disadvantage. The Respondent's action cannot be sustained because the person who took the action did not have the power to do so. Respondent's argument might have been couched in terms of waiver. He might contend that since Appellant did not raise the issue at various junctures in the proceeding, she should be deemed to have waived the issue. The civil service law is not only for the benefit of individual State employes, but is intended to ensure that the State government attracts and retains an able work force so that the business of State government will be carried on competently and efficiently. One important aspect of the law is that State employes can be removed from their positions only in the manner prescribed by law. We conclude that the Appellant cannot waive the public's interest that this policy of the law be given effect.

ORDER

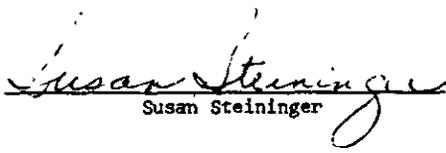
Upon the foregoing Opinion and the entire record in the case,

IT IS HEREWITH ORDERED that the Respondent immediately reinstate the Appellant to her former position, without any loss of seniority or other benefits and with full back pay, from the date of her discharge to the date of her receipt of Respondent's written unconditional offer of reinstatement.

March 29, 1974

STATE PERSONNEL BOARD

By


Susan Steininger