STATE OF WISCONSIN STATE PERSONNEL BOARD

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CLARENCE NEITZEL,

Appellant,

v.

MANUEL CARBALLO, Secretary, Department of Health & Social Services,

Respondent.

Case No. 73-32

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OPINION AND ORDER

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

NATURE OF THE CASE

This is an appeal of the denial at the third step of a grievance concerning the Appellant's mandatory retirement date.

FINDINGS OF FACT

The Appellant at all relevant times prior to his retirement was employed as a Correctional Officer II, Wisconsin State Prison, Department of Health and Social Services. He commenced state employment in the classified service on January 16, 1950. Sometime on or before June 1, 1969, the Appellant filed pursuant to S. 41.02 (11) (b), Stats. (1969) a written election with the Wisconsin Retirement Fund Board to become a protective occupation participant under the Wisconsin Retirement Fund effective July 1, 1969.

Pursuant to this statutory provision S. 41.02(11) (b), the mandatory retirement date for correctional officers was changed from 65 to 60. To prevent mass retirement of personnel attaining the new mandatory retirement age, the Department of Health and Social Services issued in its Administrative Practices Manual a schedule to be followed to permit those employes who would otherwise be required to retire upon the attainment of mandatory retirement age to continue their employment so that there would be a gradual phase-out of all "over-age" employes. On June 30, 1972, the Department of Health and Social Services indicated that all employes born between July 2, 1912,

and July 1, 1913, would be retired on December 31, 1973. The Appellant was born December 22, 1912. On June 30, 1972, the Department of Health and Social Services revised this schedule to require the retirement of individuals born between July 2, 1910, and December 31, 1912, on December 31, 1972. This action was taken at least in part to facilitate a reduction in work force to meet reduced population and service levels then taking place. Thus the Appellant was required to retire a year earlier under the revised schedule, and he did so. He received notice of the revised retirement date on November 8, 1972. Internal departmental policy at the time was "the initial notice shall normally be given at least a year before the effective date." Appellant's Exhibit 1, Attachment 3.

Appellant purchased an automobile prior to the change in retirement date in reliance on the theory that he would be working an additional year. He did not need the car to go to work following retirement and was unable to sell it. He was also unable to do some remodeling of his home he had hoped to accomplish due to the diminution of his income caused by his earlier retirement.

CONCLUSIONS OF LAW

JURISDICTION

The Respondent argues that there is no jurisdiction to hear this appeal because the Departmental Grievance Procedure limits fourth step appeals to the Personnel Board to grievances which allege a violation of either a personnel rule or a civil service statute or a function which the Director of the Bureau of Personnel has affirmatively delegated his authority to the department. The Respondent further argues that Appellant's appeal letter, Board's Exhibit No. 1, contains no such allegation.

Laying to one side the effectiveness of an internal departmental grievance procedure to limit the jurisdiction of this Board, the Appellant's appeal letter complains of a lack of sufficient notice of his retirement date and states his opinion that the work force should have been reduced by layoffs rather than by early retirements, if such reduction were

necessary. Giving a liberal interpretation to this document, which bears only the signature of the Appellant, it may be characterized as an allegation that the personnel transaction in question should have been handled as a layoff situation, and that the "forced" retirement was otherwise defective. We are not prepared to hold that Appellants should be required to state with particularity in their grievances the specific statutes and rules they allege were violated by a particular personnel transaction. Administrative proceedings before this Board should be relatively informal and designed to facilitate appeals for persons not represented by counsel. In this vein it is inappropriate to impose strict requirements on pleadings. We conclude that we have jurisdiction over this appeal.

DECISION ON MERITS

Respondent argues that when the Respondent first fixed Appellant's retirement date at December 31, 1973, this date became part of a contract of employment that was breached when that date was changed unilaterally by Respondent to December 31, 1972. We conclude that Appellant's rights as an employe under the civil service were those set forth in the civil service statutes and rules promulgated thereunder. We do not agree with Appellant's theory that the common law of contracts applies as a general proposition to the relationship between the civil service employe and the state.

The Appellant also argues that the Respondent should have handled Appellant through a layoff procedure. The statutory provision relative to layoffs is S. 16.28(2), stats.:

> Employes with permanent status in class in permanent, sessional and seasonal positions in the classified service . . . may be laid off because of a reduction in force . . . . (Emphasis supplied.)

There is no requirement that a layoff be utilized for a reduction in force if another means, such as employes reaching the statutory retirement age, will effectuate the same results. See Sandstrom v. Schmidt, Wis. Pers. Bd. 73-158 (1/2/75).

Another argument by Appellant is that the actions of the Respondent were arbitrary and capricious. This terminology was defined by the Wisconsin Supreme Court in Pleasant Prairie v. Johnson, 34 Wis. 2d 8, 12 (1966), as follows:

> An arbitrary or capricious decision is one which is either so unreasonable as to be without a rational basis or the result of an unconsidered, wilful and irrational choice of conduct.

The decision to advance Appellant's retirement date was based on a reduced work force then due to a decreased prison population. We conclude that it was not arbitrary and capricious, nor, under all the circumstances, was the Respondent's failure to give the Appellant the one-year notice suggested by departmental policy.

The final point raised by Appellant concerns equitable estoppel. Normally, three factors must be present:

> (1) Action or inaction which induces (2) reliance by another (3) to his detriment.
> Gabriel v. Gabriel, 57 Wis. 2d 424, 429 (1972)

We conclude that these factors are presented by Appellant's purchase of an automobile prior to the change in his retirement date. However, in order for equitable estoppel to be applied against the state, the state action must amount to "a fraud or manifest abuse of discretion." Surety Savings and Loan Assocation v. State, 54 Wis. 2d 438, 445 (1971); Laub v. Carballo, Wis. Pers. Bd. 74-64 (5/24/76). We conclude on this record there was no fraud or manifest abuse of discretion.

ORDER

IT IS ORDERED that the response of the Respondent at the third step is affirmed and this appeal is dismissed.

Dated August 23, 1976. STATE PERSONNEL BOARD

Percy L. Julian, Jr., Chairperson