

OFFICIAL

STATE OF WISCONSIN

PERSONNEL BOARD

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KATHLEEN BEAUCHAINE,
Appellant,

v.

WILBUR J. SCHMIDT, Secretary,
Department of Health and Social
Services,

Respondent.

Case No. 73-38

* * * * *

OPINION

AND

ORDER

II

Before AHRENS, Chairman, SERPE, JULIAN, STEININGER and WILSON.

OPINION

On March 8, 1973, the Superintendent at the Oregon School for Girls, a State facility operated at the direction of the Respondent, suspended the Appellant for one day allegedly for dismissing her class before the appointed time.

The Appellant moved that she be reinstated, since the suspension notice did not sufficiently advise her of the time and date of the alleged infraction and, therefore, denied her Due Process of Law. At the prehearing conference, the parties, by their counsel, agreed that the sole question raised by the motion was one of law pertaining to the sufficiency of the suspension notice. The parties filed briefs and waived oral argument on the matter at issue. No hearing on the facts was held.

On October 18, 1973, the Board entered its Opinion and Order holding the Board had jurisdiction and could determine the matter without hearing

since only a question of law had been presented and, further, that the suspension notice was inadequate under the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Wisconsin Statutes. The Order reinstated Appellant fully. On October 22, copies of such Opinion and Order were served personally on counsel for the parties.

On November 20, 1973, Counsel for the Respondent in a letter to the Board, requested that Board reconsider its decision in the matter on the grounds that the Board had no authority to determine the matter without a hearing.

We feel that in light of recent statutory changes, the Board does have the authority to reconsider its decision once a matter has been finally decided. In the past, Baken v. Vanderwall, 245 Wis. 147 (1944) was used to deny the Board such authority. In Baken, a conservation warden appealed his discharge to the Personnel Board and after hearing, the Board sustained the discharge. After so doing, the Board voted to reconsider the case and subsequently reversed itself and reinstated the warden. The Supreme Court held that the statute creating the Board and specifying its duties does not authorize it to grant a hearing or reconsideration where the matter has been fully determined.

While Baken interpreted Wis. Stats. Chapter 16 as it was in 1944, we hold that with the recent changes in Chapter 16, Baken is no longer applicable. In 1971, Chapter 270, Section 14 (1971) Wis. Laws, revised Wis. Stats. 16.05 to include the following new provision:

"(1) The board shall:

(a) Adopt rules necessary to carry out this section..."
Wis. Stats. 16.05(1)(a), 1971.

We hold that Section 16.05(1)(a), Wis. Stats., 1971, gives the Board the power to implement a procedural rule permitting it to reconsider matters which it has fully determined. Section 227.02(1)(a), Wis. Stats., 1971, does not require notice or hearing concerning such a rule where the rule is procedural rather than substantive. See also Section 227.014, Wis. Stats., 1971. The adoption of such a rule is necessary to carry out the purpose of Chapter 16, which, as stated in Section 16.01(2), 1971, is to:

"...develop, improve and protect a state-wide personnel management program which assures that the state hires the best qualified persons available and bases the treatment of its employees upon the relative value of each employee's service and his demonstrated competence and fitness."

To accomplish the goals of such section, we feel that the Board must use the rule making powers as given by Section 16.05(1)(a) to do everything possible to assure that its decision is fair and impartial. Since a decision based on a mistake of fact or law is certainly not a just decision, there may be instances where a rehearing is necessary to guarantee that a just decision will be made. We, therefore, hold that the Board may, at its discretion, grant a rehearing even where a final decision had previously been made.

We wish to make it clear that the Board's discretion to grant a rehearing is not unlimited and is proscribed by those considerations discussed at length in Baken. Therefore, we make the rule that the request for a rehearing must be made within 15 days of the service of the Board's original decision or it will not be considered. We choose the 15-day period as a time limit since it is the same as the statutory period for filing appeals from 16.05(2).

In the present case, the Board personally served upon the Respondent a copy of its decision on October 18, 1973. The Respondent's request for rehearing was not received by the Board until November 20, 1973. Since the Respondent's request for rehearing did not come within the 15-day limit, we will not consider this request for reconsideration. Even if this request was timely filed, we would not grant a rehearing in this case.

ORDER

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

IT IS ORDERED that the Respondent's request for reconsideration is hereby denied.

Dated July 22, 1974

STATE PERSONNEL BOARD

BY



William Ahrens, Chairman