

STATE OF WISCONSIN

STATE PERSONNEL BOARD

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RHONDA BRODBECK,

Appellant,

v.

BRONSON LAFOLLETTE, Attorney General,
and VERNE KNOLL, Deputy Director,
State Bureau of Personnel,

Respondents.

Case No. 74-114

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OFFICIAL

INTERIM
OPINION AND ORDER

Before: Percy L. Julian, Jr., Laurene DeWitt, John Serpe, Susan Steininger

NATURE OF THE CASE

This matter was filed as "a grievance, under Section 16.05(4), Wis. Stats." Appellant's grievance dated October 2, 1974, p. 1. It involves the termination of a limited term employe who had approximately two years of employment with the agency prior to termination and who alleges that this conferred some form of vested interest in the position in question, and that there was a causal connection between some communications she made to her supervisors concerning her status and her termination. Respondents' motion to dismiss was denied in an Opinion and Order entered November 25, 1975, in which we requested that the parties file written statements concerning Appellant's dismissal and the department's use of LTE's. These statements have been filed.

OPINION

After review of the statements and documents submitted, and consideration of certain Circuit Court decisions on the Board's investigatory power that have been rendered in the interim, see State ex rel Department of Administration v. Personnel Board, 149-295 (Dane County Circuit Court, April 30,

1976), and State ex rel Hart v. Personnel Board, 151-038 (Dane County Circuit Court, June 10, 1976), we conclude that it would be appropriate to proceed with a further investigation of this matter. The department's explanation of its use of LTE's, taken at face value, raises very serious questions of violations of Chapter Pers 10, Wisconsin Administrative Code. There is some dispute concerning the circumstances of Appellant's termination. She has alleged no direct evidence of improper motive for the termination but apparently would have us draw an inference from all of the circumstances.

To avoid possible confusion, we feel it appropriate to underscore the nature of the investigatory function being exercised here. The Appellant has sought specific relief:

"The Board is further requested to order the Department to offer appellant reinstatement as well as back pay for the wage and fringe benefit differential between permanent status employment and her actual employment." p. 4, APPELLANT'S RESPONSE TO RESPONDENT'S EXPLANATION

In our initial Opinion and Order, we noted in response to Respondents' objection that the Personnel Board does not have the authority to grant the various forms of relief requested: ". . . if all or some of the relief requested is beyond our power to grant, we can still entertain the proceeding and enter such order as is appropriate and within our power." p. 6.

In this case the allegations concern the improper termination of an employee who complained of her status and a departmental abuse of the LTE classification. Hypothetically, if a complaint of this nature had been received from a totally anonymous source the Personnel Board might well decide to investigate such allegations because of their importance to the civil service system, regardless of the fact that there might not be present a particular individual or group of individuals who would benefit from a remedial order. A "cease and desist" order directed to the agency in the event illegal


conduct were found would inure to the benefit of the civil service system as a whole. In deciding to pursue this investigation, we are concerned with "matters touching the enforcement and effect of this subchapter and rules prescribed thereunder," S. 16.05(4), Wis. Stats. The identity of and circumstances surrounding the complainant, if there is one, are secondary. The question of what relief, if any the Appellant in this case is entitled to is properly addressed after there is a determination as to whether anyone "acted illegally or to circumvent the intent or spirit of the law." In any given case it may be appropriate to issue a cease and desist order or its equivalent but to deny specific relief to a complainant on the theory that he or she failed to comply with the statutory prerequisite to the invocation of our appellate jurisdiction. We will cross that bridge when and if we come to it. However, if we can institute investigations on our own motion, we can surely institute investigations on the request of someone who is not statutorily entitled to an appeal, which is a separate facet of the statutory jurisdiction of the Personnel Board.

ORDER

IT IS ORDERED that the Board legal staff conduct an ex parte investigation into this case, utilizing if necessary or desirable sworn depositions or other means of gathering evidence, and return a report and recommendation to this Board.

Dated December 21, 1976.

STATE PERSONNEL BOARD


Laurene DeWitt, Vice Chairperson