

* * * * *

LUCY VAN LAANEN,

Appellant,

v.

VERNE KNOLL, Deputy Director,
 State Bureau of Personnel, and
 MANUEL CARBALLO, Secretary,
 Department of Health and
 Social Services,

Respondents.

Case No. 74-17

* * * * *

OFFICIAL

DECISION AND
ORDER ON MOTION FOR
RECONSIDERATION

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

The Appellant has filed a motion to reconsider our opinion and order in this matter entered March 19th and amended March 23, 1976. In that opinion and order we discussed the possible sources of authority for action by this Board that would result in an award of back pay for an employe wrongfully denied reclassification. We noted that the most specific statute dealing with this type of personnel transaction, S. 16.38(4), provides for back pay for employes who have been wrongfully "removed, demoted or reclassified." We also discussed S. 16.05 (1)(f), stats., which provides that in the event of rejection of an appealed action of the Director this Board ". . . may issue an enforceable order to remand the matter to the director for action in accordance with the board's decision.":

It is arguable that this section provides a basis for granting rather broad ancillary relief in a case such as this. However, where the legislature has dealt specifically with the question of back pay in one statute (S. 16.38(4)), this normally controls over a more general provision (S. 16.05(1)(f)). See Schlosser v. Allis-Chalmers Corp., 65 Wis. 2d 153, 161 (1974). p. 5.

In support of the motion for reconsideration Appellant argues that we should not have made reference to S. 16.38(4) in this fashion:

Appellant believes that the Board should not even have construed that Section [S. 16.38(4)] because S. 16.05(1)(f), not S. 16.38(4), confers authority on this Board to issue remedial orders . . . Nothing in S. 16.38, however, deals with this Board's authority to issue orders or what the content of the orders may be

* * *

Section 16.05(1)(f) does not by its terms distinguish between orders remedying improper reclassification and orders remedying improper denial of reclassification. Therefore, this Board should indeed -- may not distinguish between them.

It may be argued, however, that the Board should import the restriction it perceives on writs on mandamus actions in S. 16.38(4) into 16.05(1)(f). This would not be just or wise (Bd. March 19, 1976 Dec. 4); nothing in the language of either S. 16.38(4) and 16.05(1)(f) compels or even supports such a result. Moreover, there is, at least arguably, justification for a mandamus for improper removal, demotion, and reclassification, but not for other wrongs to employes that this Board may order rectified. . . .

We do not find this line of argument persuasive. Section 16.38(4) does more than provide a means of enforcement (mandamus); it creates substantive rights in connection with very specific personnel transactions. It explicitly encompasses an order of this Board regarding back pay:

Any employe . . . who has been reinstated to such position or employment by order of the board or any court upon review shall be entitled to compensation therefor . . . and such employe shall be entitled to an order of mandamus to enforce the payment or other provisions of such order.
(Emphasis supplied.)

If this Board had the rather expansive powers under S. 16.05(4) for which Appellant argues, there is no convincing explanation of legislative intent in only mentioning three specific transactions in S. 16.38(4), whatever argument might be made along this line if S. 16.38(4) only created a means of enforcement of rights.

Page 3

Van Laanen v. Knoll & Carballo - 74-17

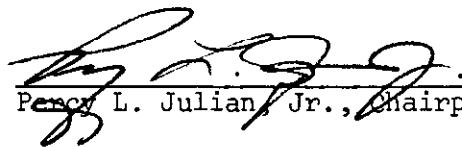
We have done additional research on the questions presented by this case and this motion and are not persuaded that we should reconsider our earlier decision.

ORDER

IT IS ORDERED that Appellant's motion for reconsideration is denied.

Dated August 27, 1976.

STATE PERSONNEL BOARD


Percy L. Julian, Jr., Chairperson